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INTRODUCTION

This case is about whether the main broadcast, programming and administrative facilities of Three Angels Broadcasting Network, Inc., should be exempt from Illinois property taxes. Three Angels is a religious broadcast ministry based in southern Illinois that beams its Christian, Bible-based programming to literally every populated continent of the globe using satellite technology. Three Angels creates and produces much of the programming it airs, but also airs the programming of other Christian ministries, some at no cost, and some at a nominal fee. The vast majority of its operating revenue comes from charitable donations.

All the programming aired by Three Angels is supportive of and advances the Bible-based doctrines and beliefs of the Seventh-day Adventist Church. The programming consists of Bible-based preaching, teaching, and worship music, as well as segments on Christian lifestyle, including the importance of treating the body as the temple of the Holy Spirit by promoting fitness, health and a Biblically-based vegetarian diet.

Three Angels is operated by an independent board consisting of eleven members of the Adventist church, a number of whom are present or former church leaders. None of the donor funds that support Three Angels ministries goes to the inurement of any private person. Three Angels has operated in this fashion for about twenty years, and during this time has been recognized as a not-for-profit, tax-exempt organization by both federal and state authorities. It holds a 501(c)(3) charitable and religious entity exemption from the IRS, and is treated as a not-for-profit by the State of Illinois for sales tax purposes.

For its first fifteen years or so, Three Angels was also treated as exempt for property tax purposes. It paid no property taxes on its operations and administrative properties until it was assessed, with no real explanation for the change, in the year 2000, and then again in 2001. It challenged these assessments to the Board of Review based on Three Angels' religious character and religious use of its properties, but to no avail. Three Angels then challenged these findings to the Department of Revenue, and an administrative hearing was held between September 23 and 25, 2002. On January 28, 2004, Administrative Law Judge Barbara S. Rowe held that applicant is a "non-religious and commercial enterprise," and that, with the exception of two small pastoral offices, the buildings at issue are "used with a view to profit."

Three Angels takes strong exception to Judge Rowe's conclusions, both to her findings of fact and conclusions of law, regarding the religious nature of Three Angels, and its religious use of the subject properties. Three Angels filed a motion for reconsideration, and when this was substantially denied, it filed this timely appeal for a review of these issues.

QUESTIONS PRESENTED

While there are a number of factual questions presented below, the primary legal questions presented by this appeal are:

1. To qualify for property tax exemption, must a religious organization use its property only for worship services and Sunday school lessons, or may it also engage in other kinds of religious communication and instruction, including the creation, distribution and broadcasting of religious services, instruction and programs related to a Biblical lifestyle?

2. Does the accrual of 1 to 2 months operating expenses in the form of net revenue by a religious organization disqualify that organization from being a not-for-profit entity?
3. Does the receipt of a de-minimis amount of a royalty, i.e., \$20, from an unrelated third party, based on the licensing of personal property, by an officer of a religious organization, equal the same thing as a disqualifying personal inurement from the religious organization?
4. Should an applicant for religious property tax exemption be allowed to present witnesses and evidence regarding the religious nature of its beliefs and activities?

STATEMENT OF THE CASE

The factual statement of this case comes in three parts. The first section will outline those facts as to which there is no substantive dispute or disagreement. These will include findings made by the trial judge, as well as those facts in the record that are otherwise undisputed. The second section will consist of findings of fact, and applications of fact to law, made by the trial judge that Three Angels believes are not supported and/or are contradicted by the record. Three Angels is asking this Court to reverse these particular findings and conclusions.

The final section consists of facts and testimony that the trial judge entirely excluded from the hearing, but that Three Angels preserved through offers of proof, and now asks this court to consider as the basis for a reversal. The legal argument section will then reference each of these sections. Certain legal arguments will provide a basis for reversal based on the

undisputed facts, while other arguments will be based on this Court overruling the trial judge on certain legal and factual issues, or to allow in evidence or witnesses excluded below.

1. Undisputed Factual Background

A. Three Angels Structure and Organization

Three Angels Broadcasting Network, Inc. was incorporated under the General Not For Profit Corporation Act of the State of Illinois on March 1, 1985 for purposes that are “exclusively religious, charitable or educational within the meaning of Section 501(c)(3) of the Internal Revenue Code.” Barbara Rowe’s Recommendation for Disposition of January 28, 2004, at p. 5 (hereafter referred to as “RD #”). Among its specific purposes, Three Angels was to “plan, promote, produce and direct . . . all types of religious programming” for television and radio, to buy and sell television and radio equipment to further this purpose, and to promote and produce “recorded music and video” programs to further the religious mission of the organization. RD 5.

Further, the Articles of Incorporation and Bylaws require that, upon dissolution, the assets of the organization must go to a similar, not-for-profit, charitable organization. Trial Transcript 54-60 (hereafter “TT#”); Order Purs. Applicant’s Pet. Rehear p. 2 (hereafter “OPR #”).¹ The directors and officers of Three Angels broadcasting were, and are, members, leaders and elders of the Seventh-day Adventist church. RD 7, fn 2; TT 92-96. The board meets regularly several times a year to oversee and guide the work of Three Angels and to approve its

¹ There was some confusion on this point in the judge’s initial opinion caused by an incomplete set of bylaws inadvertently submitted at trial. RD par. 3, fn. 3. This caused the judge to initially rule that Three Angels’ by-laws lacked the important dissolution language. RD 30. But when the error in the by-laws exhibits was brought to the judge’s attention in a motion for reconsideration, she ruled that the complete set of bylaws would be accepted as part of the record, and she acknowledged that they did contain the appropriate dissolution clause language. OPR 2.

budget and strategic planning. RD 7 par. 9-10, fn. 2; TT 95. The board members are not paid for their services, and neither are they reimbursed for their travel expenses to board meetings. TT 500-501.

B. The Three Angels' Properties and Their Religious Uses.

The planning, organizing, support, and most of the production of the religious programs described below took place at Three Angels headquarter facilities at issue in this action. TT 103. Three Angels acquired the 5 acre parcel at issue in 1991, and during the relevant time period, had three buildings on it. RD par. 3. The first building is a three-story administrative offices/filming/production center that contains about 30,000 square feet. This building contains two studios where Three Angels films its programs, and a production area. RD par. 4. This building also houses the administrative areas for finance, engineering, as well as Three Angels management. Id. It also contains two pastoral care offices, offices for the president and vice-president, and also an area where the graphics, maintenance, and computer department are located. RD. par. 4. The first building also contains the 10,800 square foot BOS Auditorium, where a number of evangelistic meetings were held. RD. par. 3.

The second building is a maintenance/carpenters shop of about 2,400 square feet, where the maintenance materials required in the upkeep of the studios, offices, as well as the construction of television sets is handled. RD. par. 3, 6. The final building is the 7,000 square foot call center, where Three Angels stores the books, videos, CDs and other materials that it gives away and otherwise distributes. RD. par. 3, 5. It is also at the call center that Three Angels responds to the calls that come in inquiring about Three Angels' books, videos and other materials. Id.

The major amount of Three Angels programming originates from the above properties, most notably the studios and production center. It is there that the programming is filmed, edited, produced, and made ready for broadcast. TT 84-87. The President and Vice-President of Three Angels had a daily religious program filmed at the studios entitled *Three ABN Presents*. This program consists of scripture reading, prayer, devotional thoughts, and interviews with religious leaders and missionaries from around the world. RD par. 26; TT 85-86, 130.

Other ministry programs are filmed in the same studios, including Christian lifestyle programs that highlight Children's Bible programs, Bible reading sessions, health and nutrition segments, and cooking classes based on Bible-based vegetarian diet. RD par. 26-27; TT 86. None of the programming Three Angels creates is copyrighted, and viewers are encouraged to copy the programs to share as a witnessing tool with friends. TT 574.

C. Three Angels Promotion of Seventh-day Adventist Gospel Beliefs.

The Three Angels board has voted that all programming of Three Angels is to reflect the 27 fundamental beliefs of the Seventh-day Adventist Church. TT 598. The very name of the organization, "Three Angels," has a special meaning for Seventh-day Adventists. It is based on the three angels discussed in Revelation 14:6-12, that herald the "everlasting gospel" to "every nation, tribe, tongue and people." TT 47. The three angels' messages relate to unique and central doctrines of the Adventist church, such as the Sabbath, the final judgment, and the second coming of Jesus Christ. TT 48. This message also includes the need to take care of our bodies and health as directed by our Creator, Jesus Christ, as the body, mind and spirit are closely linked. TT 71-72.

The Three Angels ministry spreads this message through preaching, Bible teaching, and gospel music and singing that it airs on various satellite, broadcast and cable television stations, as well as satellite radio stations, in America and throughout the world. RD 13-14; TT 70, 73-76. The leadership of Three Angels, along with a filming crew, traveled between twenty and thirty weekends a year to hold Three Angels' praise, prayer and gospel preaching rallies at Seventh-day Adventist churches in America and overseas. RD 10, 34; TT 131-132. Three Angels also has a number of overseas gospel workers that it directly supports in missionary media work in Russia and the Philippines. Three Angels also paid for and continues to support religious broadcast centers in these locations. RD 8 par. 15; TT 134-135.

D. Three Angels Cooperation with the Seventh-day Adventist Church

Three Angels has a formal agreement with the Seventh-day Adventist Church to cooperate together to advance the ministry and missionary work of the Church. RD 19-20; TT 97. In the "Joint Declaration of Commitment," Three Angels agrees to work with the church "in the proclamation of the everlasting gospel to the entire world," to proclaim the "gospel in its purity," and to encourage "membership in the church." RD 19 par. 66.

Three Angels works closely with ministries of the church to support and promote its missionary projects. TT 108-110. These organizations include Global Missions, for which Three Angels produced 20 or 30 programs a year that focused on overseas mission projects, such as building churches, orphanages, or religious schools. RD 12 par. 40; TT 108-109. Three Angels produces and/or airs programs for the Church's evangelistic, preaching programs of the *Quite Hour*, *Voice of Prophecy*, and *Amazing Facts*. RD 15 par. 55; TT 109-110.

Indeed, from 70% to 80% of Three Angels' programming is made by or features employees, largely pastors, of the Seventh-day Adventist church. TT 112. These church programs do contribute to the expense of producing and/or broadcasting the programs. But Three Angels sets the base rate at only \$1,200 per hour, which is well below commercial market rates, and is below the actual cost of that hour to Three Angels. RD 15 par. 54; TT 160-161.

E. Three Angels Provision of Free or Reduced Fee Programming and Airtime.

Three Angels often adjusts its airtime rates downward, based on a particular ministry's ability to pay. TT 161-162. A review of the rates charged and hours given shows that many ministries were charged less than \$1,000 per hour, and that some were charged around \$500 per hour. RD par. 55, 57. The only other evidence in the record of airtime charges were those of CNN, which range from \$2,800 to \$24,000 per *minute*. TT 160-161.

Three Angels has also provided the Adventist Church with a significant amount of free programming during the years under consideration. Three Angels produced and broadcast the General Conference Session of Seventh-day Adventists held in Toronto, Canada, in the summer of 2000. RD par. 39; TT 105, 107. This international church business meeting lasted two full weeks, and Three Angels covered it at no charge to the church. TT 108. Three Angels also broadcast a number of worldwide evangelistic meetings for the church, known as "Net Series." RD 38. These gospel preaching presentations went for five nights a week for about a month. RD 37; TT 101-103, 106. Once again, Three Angels did not charge the church for these Net Series, two of which occurred in the year 2000. TT 105-106, 108, 556-557.

Three Angels also supported its local church conference, the Illinois Conference of Seventh-day Adventists, by providing down-link services for the church's town-hall meetings at 80 sites throughout the state of Illinois. TT 552-553. Three Angels charged the church only for the cost of special equipment that Three Angels had to rent to broadcast the meetings. TT 554.

Three Angels allowed its headquarters' property to be used for no charge by the Illinois Conference as a camp-meeting headquarters on a yearly basis. 557-558. It also provides, similarly at no charge, property on which the conference runs and operates a church and a school. TT 558-559. Three Angels also financially funds and supports a full-time Seventh-day Adventist evangelist through the Illinois Conference. 559-561.

F. The Religious Content of Three Angels Programming.

All the programming created and/or aired over the Three Angels network is screened to ensure that it supports and is consistent with the fundamental beliefs of the Seventh-day Adventist Church. TT 598-599. This screening is carried out by various persons, including the on-site staff of four Seventh-day Adventist ministers who are very familiar with the teachings and beliefs of the Adventist Church. RD par. 74; TT 598. These pastors also pray and counsel with viewers who call in on the ministry's prayer hotline. Id. These pastors also conduct religious services and worship at the headquarters facility for Three Angels employees, as well as at the local Adventist church and school. TT 533-34.

G. Pricing and Revenue of Religious Materials.

Along with its TV broadcasts, Three Angels also distributes its message via video and audio tapes, CDs, books, and other types of literature that are all consistent with the Adventist message. TT 117-118. At times these items are given away, at other times, a

nominal fee is charged to cover a portion of the costs of the item. RD par. 5; TT 118, 171-172. If an item is sold, the price is set based on affordability to the donors rather than based on the need to cover the costs of the item. TT 169-170. If a caller cannot afford the item, it is given away. TT 169. There is no evidence that any items are sold at more than cost, and there is only evidence that items, including satellite dishes, which Three Angels makes available for persons living in areas where the broadcast is not available on cable or the airwaves, and airtime, are sold at or below cost. TT 161,166-167.

Revenue attributed to the sales of books, tapes, videos, CDs, satellite dishes, or any other material Three Angels sells did not exceed the expenses associated with purchasing, promoting or distributing those items. TT 449-450, 476-477. The sale of airtime covers only a fraction of the expenses associated with the broadcast of that airtime, when equipment costs, satellite fees, and other direct overhead are factored in. TT 436, 441-444; Appl. Exh. 14-15. The gross amount of revenue associated with these sales is only a few percent of Three Angels total revenue. TT 433, 435-436. Between 75% to 85% of Three Angels' revenue comes from charitable donations made by its viewers and listeners. TT 139-140.

H. Salaries and Issues of Personal Inurement.

The board sets the salaries of the President and Vice-President of Three Angels. TT 144-145. The salaries are guided by the equivalent salary, including benefits, of a minister of the Seventh-day Adventist Church. TT 145. President Danny Shelton received about \$50,000 per year in 2000 and 2001, and Vice President Linda Shelton received about \$45,000 in 2000 and \$47,000 in 2001. TT 141, 144. The Sheltons, along with the other salaried employees of Three Angels, received health benefits and one-half dental benefits, and the use of a company car for business purposes. TT 141, 144.

Apart from erroneous finding by the trial judge that Linda Shelton received royalties from the sale of her CDs and that Three Angels board was made up of only four members of the Shelton family, which will be discussed and disputed in the next section, there are no other facts or evidence that show any other inurement or improper benefit flowing to a private person from Three Angels. Indeed, the testimony of both the internal treasurer, Larry Ewing was that there was no personal inurement of Three Angels revenue to private persons. This also was the conclusion of the testimony of Three Angels' independent, external auditor, Alan Lovejoy, of Gray, Hunter, & Stenn, LLP, as it would be a violation of basic not-for-profit corporation standards. TT 453-54, 476, 486.

Neither the state nor the interveners called any witness or submitted any evidence regarding the operations, mission, financial matters, personal matters or board operations of Three Angels. The interveners called a single witness who testified to the simple and largely irrelevant claims that prior to the assessment year 2000, the subject property had been assessed as vacant ground, and that new construction in 1999 had caused it to be re-assessed as taxable. TT 656-658. Thus, the testimony of the Three Angels' witnesses was essentially unchallenged and unrebutted.

2. Disputed Factual Findings.

The hearing judge made certain erroneous factual findings, and erroneous applications of the law to the facts, that this Court should overrule. The Illinois Administrative Review Law provides the following description of the standard of review for questions of fact:

§ 3-110. Scope of review. Every action to review any final administrative decision shall be heard and determined by the court with all convenient speed. . . . The hearing and determination shall extend to all questions of law and fact presented by the entire record before the court.

The code also says that “the findings and conclusions of the administrative agency on questions of fact shall be held to be prima facie true and correct.” *Id.* But this has come to mean different things depending on whether a “pure” question of fact is at issue, or whether the question involves the application of law to fact.

For “pure” questions of fact, the appropriate standard of review is whether “they are contrary to the manifest weight of the evidence.”² “Factual findings are against the manifest weight of the evidence” where all “reasonable and unbiased persons would agree it is clearly evident the administrative agency erred and should have reached the opposite conclusion.”³ Only if “the record contains evidence supporting the agency’s decision” should it be affirmed.⁴

As opposed to a “fact” question, a question of mixed fact and law involves “the examination of the legal effect of a given set of facts . . .”⁵ The standard of review in the case of mixed fact and law was recently discussed by the Illinois Supreme Court, where they noted that if:

the issue presented cannot be accurately characterized as either a pure question of fact or a pure question of law and, therefore, will be treated as a mixed question, subject to an intermediate standard of review. Under the clearly erroneous standard, we give somewhat less deference to the agency than we would if the decision related solely to a question of fact, because the decision is based on fact-finding that is inseparable from the application of law to fact.⁶

² *Bd. Of Educ. of Gibson City-Melvin-Sibley Community Unit School v. The Illinois Property Tax Appeal Board*, 2005 WL 293638 at *3 (Ill.App. 4 Dist.); See *Hasco, Inc. v. Roche*, 299 Ill.App.3d 118 at 126, 700 N.E.2d 765 at 773, 233 Ill.Dec. 240 at 245 (Sept. 11, 1998) (as the court was dealing with “pure questions of fact” the court stated “our standard of review is whether the court’s decision is contrary to the manifest weight of the evidence.”)

³ See *La Salle Partners, Inc. v. Illinois Property Tax Appeal Board*, 269 Ill.App.3d 621, 632, 207 Ill.Dec. 101, 646 N.E.2d 935, 942 (1995).

⁴ *Abrahamson*, 153 Ill.2d at 88, 180 Ill.Dec. 34, 606 N.E.2d at 1117. *Caterpillar, Inc. v. Illinois Commerce Com’n*, 348 Ill.App.3d 823 at 828, 283 Ill.Dec. 482, 485-86 (Ill.App. 1 Dist., 2004).

⁵ *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill.2d 380, 391, 261 Ill.Dec. 302, 763 N.E.2d 272 (2001).

⁶ *Carpetland U.S.A., Inc. v. Illinois Dept. of Employment Sec.*, 201 Ill.2d 351, 369, 267 Ill.Dec. 29, 41 (Ill. 2002):

Under these circumstances, the Court noted, they would reverse if, “after review of the entire record, we are left with the definite and firm conviction that a mistake has been committed.”⁷

The hearing judge made a number of findings below, some of which are “pure” fact, but most of which involve application of law to fact, that are against the manifest weight of the evidence and/or otherwise clearly erroneous. These findings are central to the issues in this case. They relate to the existence and legitimacy of the Three Angels’ board, whether certain persons receive private benefit or inurement from Three Angels’ operations, whether Three Angels makes donations or gives away materials and airtime, and whether its officers are actively engaged in religious ministry. The conclusions reached by the hearing judge on these topics are not supported by and, in a number of instances, are directly contrary to the trial record and the manifest weight of the evidence.

A. Issue of Inurement and Board Makeup.

The hearing judge mistakenly ruled that the evidence showed that the only board members during 2000 and 2001 were persons with the last name Shelton. DR par 8, fn 2. From this clearly erroneous finding, the judge reaching the equally erroneous conclusion that the company was not run by an independent board of directors, but was operated as a closely held business for the personal benefit of the Sheltons. DR 35-36. The Administrative Law Judge reaches this erroneous conclusion based on the name of the four individuals listed as the original incorporating directors on the Three Angels’ 1985 Articles of Incorporation, all of which had the last name Shelton and listed the same address. Extraordinarily, the

⁷ Id., quoting *AFM*, 198 Ill.2d at 395, 261 Ill.Dec. 302, 763 N.E.2d 272, quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 542, 92 L.Ed. 746, 766 (1948).

Administrative Law Judge made this finding despite having acknowledged that Dr. Thompson, the chairman of the board, was a board member, during 2000 – 2001. RD 7, fn. 2.

Indeed, at trial, there was no testimonial or documentary evidence that Kenneth Shelton and Emma Lou Shelton were members of the board of directors in 2000 or 2001. They were only identified as founding directors in the 1985 Articles of Incorporation. On the contrary, Danny Shelton testified that during 2000 and 2001, there were twelve directors on the Board. (TT 92. Of the twelve, nine directors were identified at trial. In addition to Danny and Linda Shelton, Dr. Walter Thompson, a doctor living in Burr Ridge, Illinois, testified that he had been a member of the board since approximately 1986 or 1987, and had held the position of Chairman of the Board from approximately 1994 to the present. TT 494, 497-499.

Dr. Thompson confirmed that May Chung was also a member of the board. TT 527. Danny Shelton testified as to the identity of five additional board members. He testified that the Illinois Conference President of the Seventh-day Adventist Church has a standing position on Three Angels' board of directors, and during 2000 and 2001, that position was filled by Elder Wayne Coulter, who was also an ordained minister. TT 92-93. Elder Coulter's replacement, Elder Ken Denslow, the current Illinois conference president and Three Angels board member, also testified at the trial regarding his board involvement. TT 551.

Mr. Shelton further testified that the Under Secretary of the General Conference of the World Church of the Seventh-day Adventist sat on the board and was an ordained minister, although this individual was not disclosed by name. *Id.* In addition, Mr. Shelton testified that: Owen Troy, an ordained minister and the Communication Director for the North American Division of Seventh-day Adventist; Larry Welch, an ordained minister; and, Ellsworth McKee, also sat on the board during 2000 and 2001.

Moreover, this Court may take administrative notice of Three Angels' federal form 990, which lists the directors and their compensation, because the forms are a matter of public record pursuant to §6104(b) of the Internal Revenue Code. In *Muller v. Zollar*⁸ the Illinois Appellate Court held that judicial notice of a public record is proper and may be taken despite the fact the public document was not offered at the administrative hearing:

Notwithstanding the limitations of section 3-110 [of the Administrative Review Act], Illinois courts recognize that documents containing readily verifiable facts capable of instant and unquestionable demonstration may be judicially noticed. [citation omitted] Judicial notice is proper where the document in question is part of the public record [citation omitted] and where such notice will aid in the efficient disposition of a case. [citation omitted] Moreover, *this court may take judicial notice regardless of whether such notice was sought at the trial court level.*

Applicant therefore requests that administrative notice be taken of Three Angels' federal form 990 for the years 2000 and 2001. These forms were made available to the State and Interveners during the discovery period of this case, and there is no reason that they should not be considered by this Court in the interests of justice. Copies of the federal forms 990 are marked as Applicant's Exhibit 25 and attached as Exhibit A .

In light of the testimonial evidence alone (or in conjunction with Three Angels' federal form 990), it was erroneous for the Administrative Law Judge to find as a factual matter that Three Angels had "only submitted the names of Danny Shelton, Linda Shelton, Kenneth Joel Shelton, and Emma Lou Shelton as the four directors of 3 ABN" for 2000 and 2001. RD. at 7, n.2. The erroneous conclusion that the board of directors was biased and partial (because it allegedly consisted exclusively of four family members) led the Administrative Law Judge to commit further error by concluding that Three Angels was a "closely held business with profits

⁸ 267 Ill. App. 3d 339,341, 642 N.E.2d 860, 862 (1994) (emphasis added), *See also Country Cos. V. Universal Underwriters Ins. Co.*, 343 Ill. App. 3d 224, 229; 796 N.E.2d 639, 643 (2003).

inuring to the [Shelton] family.” RD 35-36.

B. Issue of Sheltons’ Salary and Alleged Linda Shelton Royalty.

With respect to the wages earned by the Sheltons, Danny Shelton testified that they each earned about \$50,000 a year, their salaries were set by the board of directors, they received medical and dental benefits, but they did not receive retirement benefits. TT 141-145. Dr. Thompson, chairman of the Three Angels’ board, testified that board members do not receive any compensation for their services as directors and are not reimbursed for travel expenses. TT 500-501.

Although Mr. Shelton’s testimony was unimpeached, the hearing judge, *sua sponte*, questioned the veracity of the testimony because it was not verified by “any other evidence.” RD 35. The hearing judge’s comment overlooks the fact that Mr. Shelton’s testimony on the issue of wages was entirely uncontradicted. In the absence of some evidence on which to base the opposite inference, Mr. Shelton’s testimony on this point should be accepted. As Illinois courts have noted, the record must contain “some evidence supporting the agency’s decision” for a finding of fact to stand.⁹

Not only is Mr. Shelton’s testimony on this point undisputed in the record, there is documentary evidence that supports it. As noted above this court may take administrative notice of Three Angels’ federal forms 990 which substantiates the testimony of the Sheltons as to their compensation.¹⁰ Accordingly, Applicant requests that administrative notice be taken of Three Angels’ federal form 990 for the years 2000 and 2001, and that the finding of the hearing

⁹ *Abrahamson*, 153 Ill.2d at 88, 180 Ill.Dec. 34, 606 N.E.2d at 1117. *Caterpillar, Inc. v. Illinois Commerce Com’n*, 348 Ill.App.3d 823 at 828, 283 Ill.Dec. 482, 485-86 (Ill.App. 1 Dist., 2004).

¹⁰ The 990 forms confirm that Danny Shelton made \$53,365 and \$55,504 during 2000 and 2001 respectively, and Linda Shelton made \$47,453 and \$49,354.

judge be reversed, based on Mr. Shelton's unimpeached testimony as substantiated by the federal forms.

With respect to the sale of Three Angels' CDs on which Linda Shelton sings, the hearing judge found that Linda Shelton was operating a "commercial enterprise." RD 36. The opinion was based on the erroneous factual conclusion that Ms. Shelton obtained royalties from Three Angels from the sales of the CDs. RD 29, 33. The evidence, however, does not substantiate and is contrary to such a finding.

At trial, Ms. Shelton testified that she receives no royalties at all from Three Angels for her CDs. 641-642. Mr. Shelton confirmed the same. TT 142. Linda explained that as the author she owns the copyright to the individual songs, but she donates the CD project to Three ABN," *i.e.*, Three Angels owns and sells the CDs. TT 620. The CDs are offered for sale in Three Angels' catalogs and Three Angels receives the sales revenue. Three Angels does not pay Ms. Shelton a royalty on the sales or any other part of the CD production. Ms. Shelton testified that she makes the CDs for Three Angels as a gift to help Three Angels spread the gospel. TT 595.

When Mrs. Shelton was asked more broadly about her CDs, she explained that although she does not receive any royalties for the sales of the CDs, she retains the copyright to the songs that she writes. She licenses these to Broadcast Music Inc. ("BMI"), an organization with no ties or links with either the Sheltons or Three Angels. TT 618-619; Applicant Ex. 3. BMI collects license fees from music users, *e.g.*, radio stations, and in turn BMI pays Ms. Shelton a royalty if her songs receive "massive airplay." TT 619.

This arrangement is common in the music industry. Organizations like BMI monitor television and radio stations to determine whether any of the songs to which they hold a license are played by the station. Depending on the amount of airplay a song receives, the station is

required to pay BMI a license fee. BMI in turn pays a royalty check to the musician that has licensed his or her music to BMI. Ms. Shelton testified that she does not receive royalties for any airplay by Three Angels' broadcast networks. TT 641-642. She stated that the largest royalty check she ever received from BMI was approximately \$20. TT 619.

There is no evidence to support the claim that Mrs. Shelton receives royalties of any kind from Three Angels. Rather, she has received de minimis royalties from a third party for the use of her personal property. In light of the fact that Ms Shelton receives no royalties on the sale of the CDs or for any airplay on Three Angels' networks, and receives no royalties from Three Angels at all, it can hardly be said that Ms. Shelton is operating a "commercial enterprise for the production of her CDs." This court should reverse the hearing judge's application of law to fact RD 29, 33, and 36 that led her to conclude that Linda Shelton receives personal inurement from Three Angels, because this conclusion is clearly erroneous.

C. Donated Items and Other Giveaways.

The hearing judge further erred when she found that Three Angels "did not establish that they gave anything away free except for the catalogues that list the merchandise that is for sale." DR 29. Both the documentary and testimonial evidence contradict the judge's finding on this point. Mr. Shelton testified that every day Three Angels gives away religious materials on topics from the gospel to health, all of which are part of the fundamental tenets of the Seventh-day Adventist religion. TT 171-172; 181-182. This testimony was unrebutted.

Applicant's exhibits 18 through 21 were admitted into evidence and identify the items given away to promote spiritual growth during the years 2000 and 2001. TT 652; Applicant Exs. 18-21. They reveal that in 2000, well over 14,000 items were given away, the majority of which were books and magazine pamphlets, and in 2001 nearly 18,000 were given away. In

addition, on Thursday nights other spiritual books and magazines were also given away. Over one hundred items were offered on Thursday nights over the two years.¹¹

Linda Shelton testified that Three Angels sends out a newsletter 9 to 10 times a year and a magazine twice a year to between 100,000 and 150,000 people. These publications are free and contain miracle stories, testimonials, and information on Three Angels' initiatives and articles on devotional thought. TT 593-94.

With respect to satellite dishes, Mr. Shelton testified that he instructed his engineering team to sell the Three Angels' satellite systems at cost, *i.e.*, \$350. TT 167. Subsequently the price was reduced by \$50 so the satellite systems were sold below Three Angels' cost in order to keep them affordable to the public. TT 325. Further, Mr. Shelton stated that there was an operational policy for the free distribution of satellite system equipment to those with financial hardship. TT 296-97.

He testified that when someone requests a system for free, Three Angels checks with a pastor from the individual's church to verify that there is a financial need. If the pastor confirms there is a hardship situation, Three Angels will attempt to split the cost of the satellite system with the parishioner's church. If the church is unwilling to absorb part of the cost, the system is given away. TT 296-297. Mr. Shelton testified that approximately 5 or 6 satellite systems were given away in each of the years in question due to financial hardship of the recipient. TT 300, 331.

Several witnesses testified that Three Angels also gives away significant amounts programming airtime. Three Angels charged \$600 per half hour of airtime, but programs were

¹¹ The hearing officer viewed the documents supporting these figures as not qualifying as business records, yet this misunderstands their purpose, as they are illustrative exhibits, or compilations of data, and the underlying data was available to all parties during the discovery process. If taken seriously, the hearing judge's standard would require copies of all the books given away, or perhaps signed receipts from all

generally aired an additional two times at no charge. TT 146, 370. Mr. Shelton testified that as a matter of course, if a church or lay ministry could not afford to pay the airtime charges, Three Angels would reduce its charges, or in some instances would give the airtime away for free. TT 146-147. By way of example Mr. Shelton testified that in 2000, Three Angels broadcast the meetings of the General Conference of the Seventh-day Adventist Church which took place over a ten-day period in Toronto, Canada. Because of the location, Three Angels had to send out a remote crew and trucks to broadcast the session. Although the cost to Three Angels was approximately \$200,000, no fee was charged for the broadcast. TT 105-108.

During the year 2000, Three Angels also broadcast a separate five week evangelist preaching and worship series at no charge featuring Samuel Thomas in Ohio. TT 105-106. The same year Three Angels also broadcast at no charge an evangelist preaching series known as Pentecost 2000. The series featured pastor Steven Lewis and took place at, and was broadcast from, Three Angels' property. The program series ran for about a month. *Id.*

Danny Shelton's testimony was corroborated by an independent witness, Kenneth Denslow, the President of the Illinois Conference of the Seventh Day Adventist. Mr. Denslow testified that during 2000 through 2001, Three Angels televised the Conference's church organizational meetings, known as town hall meetings, for Adventist churches throughout the state. The Conference was only charged for Three Angels' third party costs. No charge was made for Three Angels' services. TT 551-556, 563.

Three Angels also televised the Net 2000 Series at no charge. Net 2000 was a series of biblical preaching services resulting from a cooperative effort between the Illinois Conference and the North American Division of Seventh-day Adventist. The series lasted almost five weeks with broadcasts airing almost every night of the week. TT 556-557. Three Angels also

those receiving the books. Such an evidentiary standard is impracticable enough to be impossible.

hosted and televised the Illinois Conference's camp meeting at no charge, which involved religious meetings and worship services. TT 557-558.

In short, there was significant evidence that Three Angels gave away substantial amounts of religious materials and programming airtime, as well as a small amount of satellite systems. During 2000 and 2001, an operational "give-away" policy was clearly in effect and used broadly. This testimony and evidence would have been further substantiated and supported by the testimony of Elder Ted Wilson, had his testimony been admitted, as described below.

Equally important, there was no evidence to the contrary presented, and no attempt was made to impeach the witnesses on these points. Their testimony stands as uncontradicted, and it is plain error for the hearing judge to draw opposite conclusions when there was no testimony or evidence upon which to base those contrary conclusions.

To the extent the hearing judge's opinion at pages 21, 29 and 38 are inconsistent with the evidence, Applicant requests that those portions of the opinion be overruled and disregarded, and that this Court accept the vast weight of the evidence that that Three Angels gave away or reduced the charges for numerous items as reflected in the testimony and documents.

D. Officers Directly Involved in Religious Ministry and Teaching.

Three Angels leadership constantly travels to preach, pray, and teach the Bible at churches around the country. This makes particularly perplexing the hearing judge's conclusion that "3ABN has not established that it has officers deeply involved in religious teaching that serve to accomplish the promotion of Christian education." DR 30. Relatedly, she concluded at page 34 that "[n]or is there any indication in the record that Danny Shelton is traveling to advocate the Seventh-day Adventist doctrine or faith." DR 34. Such conclusions are squarely contradicted by the evidence.

Danny Shelton is a director and the president of Three Angels. He is an ordained elder in the Seventh-day Adventist Church. As such, he participates in the distribution of the communion elements, baptisms and foot washings and represents the church on prayer missions. TT 38. He is a lay minister of the gospel. *Id.* Mr. Shelton has taught bible studies and lessons on the doctrines and teachings of the Seventh-day Adventist beliefs, and has written three books on the subject. TT 155-158.

At the property in question, Mr. Shelton hosts a daily program entitled "Three ABN Presents" that is aired on Three Angels' networks. TT 73. The program is devoted to religious instruction and missionary work. Mr. Shelton co-hosts the program with his wife, Linda Shelton, who is also a director and vice president. They host the show to spread the gospel and involve the viewers in the missionary work of the Seventh-day Adventist Church. TT 85-86, 130.

They begin the program by reading Bible scripture and praying. *Id.* Gospel music is then played. Thereafter they interview people on church-related topics. *Id.* They interview people from other ministries as well as officials and missionaries of the Seventh Day Adventist church regarding the global missions of the church, such as the building of orphanages, schools and churches in places like Bangladesh. TT 85, 130-131, 247

Mr. and Mrs. Shelton also travel extensively on the weekends to promote the Christian teachings of the Seventh-day Adventist Church directly and to educate people about Three Angels' religious programming which offers instruction and education on Seventh-day Adventist beliefs. Typically they travel to a Seventh-day Adventist church in the United States. Seventh-day Adventists observe the Sabbath from sundown Friday evening to sundown Saturday evening. TT 258.

The Sheltons begin their Sabbath services on Friday night with gospel music. Mr. Shelton then preaches. TT 131-132 Saturday morning they teach "Sabbath School" which is akin to Christian Sunday School. TT 132 Formal church services are held around 11 a.m. and Mr. Shelton usually preaches the sermon. Id. Saturday afternoon they usually participate in a religious revival where gospel music is played and testimonials are shared. TT 130-31.

Danny and Linda's involvement in religious instruction and education is not limited to their weekend travels. Both Sheltons are intimately involved in spreading the gospel through Three Angels' broadcasts. TT 130 To this end, Linda testified that Three Angels' Board of Directors voted to limit Three Angels programming to shows and music that reflect and promote the 27 fundamental beliefs of the Seventh-day Adventist Church, and that promote the Christian gospel around the world to the extent it is consistent with Seventh-day Adventist beliefs. TT 598. Danny and Linda are charged with carrying out this responsibility. The Sheltons, together with Mollie Steenson, the Department Coordinator and an ordained minister, plus the four pastors on staff at Three Angels, review all programming to assure that it is doctrinally consistent with Seventh-day Adventist views. TT 332, 532-533, 598-599. The pastors are also charged with engaging in worldwide prayer with Three Angels' viewers. They take daily prayer requests from 8 a.m. until midnight from viewers that call in on an 800 telephone number. TT 81, 531-532.

Linda Shelton is also actively involved in spreading the gospel through the monthly newsletter/magazines that Three Angels sends for free to its viewers. TT 593 The newsletter contains devotional thought and stories and is written primarily by Ms. Shelton. Id.

Doctor Walter Thompson is the Chairman of the Board of Directors for Three Angels and is an officer pursuant to Section 5.1 of the by-laws. Dr. Thompson has been a member of the

Seventh-day Adventist Church since childhood and testified that as an adult he has been involved in projects for the church for many years. TT 498. He volunteers several days a month at the free medical clinic operated by Three Angels, performing medical services. TT 193. He is actively involved in reviewing Three Angels programming to make sure it is consistent with the fundamental tenants of the Seventh-day Adventist beliefs. TT 513-514. In addition, he has appeared as a host and as a guest on various programs and videos shown by Three Angels in order to instruct people as to the health-related beliefs adopted by the Seventh-day Adventist faith. TT 516.

In short, the evidence established that Dr. Thompson, Danny and Linda Shelton, and other Three Angels leaders lead lives of service and devotion to the teachings of the Seventh-day Adventist faith, promoting the instruction and education of such beliefs. The hearing judge's conclusions at pages 30 and 34 that "3ABN has not established that it has officers deeply involved in religious teaching" and that there is no indication in the record that Danny Shelton travels to advocate the Seventh-day Adventist doctrine or faith is thus directly contrary to the evidence and should be overturned.

3. Excluded Factual Evidence

The hearing judge excluded certain testimony that Three Angels believes was directly relevant to its case in chief, as well as evidence that supported its constitutional claims of equal protection violation. Three Angels had obtained the testimony of two experts regarding Seventh-day Adventist beliefs, Elder Ted Wilson, a Seventh-day Adventist church administrator and leader, and Dr. Denis Fortin, a theology professor. Three Angels also had evidence, and sought more evidence that it was denied by the court, regarding the content and treatment by the Department of Revenue of Tri-State Christian TV, a non-Adventist Christian

television ministry, which showed that the Adventist station was treated in a discriminatory fashion when compared with the non-Adventist network. The excluded evidence was preserved through offers of proof in the record, and this Court should consider the affect the evidence would have had below. Should it not reverse the hearing judge's decision in its entirety, it should give Three Angels leave to complete its discovery on these constitutional issues, and give it an opportunity to present the evidence to the hearing judge.

A. Elder Ted Wilson and Dr. Denis Fortin – Testimony Regarding Religious Nature of Three Angels Programming.

Elder Ted Wilson and Dr. Denis Fortin were prepared to testify to the religious nature of Three Angel's programming, but their testimony was excluded by the judge. This erroneous exclusion was compounded by the fact that a central part of the judge's decision was the ruling that Three Angel's program was not religious. Rather, she found that it consisted of topics related to 'health, gardening, cooking, music programs . . . family entertainment' and "health and life style topics," along with religious programming. RD par. 41, 50. She argued that Three Angels was "advocating a way of life, but it is a lifestyle that applicant favors, not a religion." RD 31-32.

A finding that the content of Three Angels' programming is not religious is indeed fatal to its claim to be a religious ministry. *That is why it was clearly reversible error to exclude the very witnesses that would have testified as to the nature of Seventh-day Adventist religious beliefs and Biblical lifestyle and how these were reflected in Three Angel's programming.*

The judge refused to take testimony on the very point on which Three Angel's case primarily hinged. The judge clearly saw the link between the kind of programming created and aired by Three Angels and whether it was fulfilling a religious purpose. "Leasing or otherwise

using property," she wrote, "to promote a lifestyle and to market merchandise does not qualify as a use of property for primarily religious purposes." RD 31-32. But the judge came to the conclusion that the lifestyle promoted by Three Angels was not religious *without listening to the very witnesses and evidence that Three Angels proffered to her on that very point.*

Elder Ted Wilson, Vice President of the General Conference of Seventh-day Adventists, is the subject of offer of proof number four, found at "Offer of Proof Transcript" page 18-27. (Hereinafter "OPT #".) Elder Wilson was on Three Angels witness list, and was deposed by the Interveners during discovery. Three Angels also took his video-taped testimony for use at the administrative hearing, but this use was denied by the hearing judge.

On the witness list, the subject matter of Elder Wilson's testimony was described as follows:

The role of Applicant [Three Angels] in the ministry of the Seventh-day Adventist Church. He may also testify as an opinion witness concerning whether all applicant's programming and other activities are religious in the context of the Seventh-day Adventist Church. He will testify that the programming and activities carry out the theology and teachings of the Seventh-day Adventist Church and are substantially similar to the General Conference of the Seventh-day Church's related mass communication activities.

Elder Wilson was proffered as both an opinion witness and a fact witness. He had visited the Three Angels' property on a number of occasions, had knowledge of what it was used for, and had extensive knowledge of Three Angels' programming content. OPT 20-21. He also is a Vice-President for the Adventist Church, and had particular oversight of the Church's media activities, including television and radio ministries. OPT 19. The relevant portions of Elder Wilson's debene esse deposition testimony ("Wilson Test.") were submitted to the court below and are part of the record herein. OPT 18.

In this testimony, Elder Wilson spoke to the religious nature of Three Angels programming and the manner in which it furthered the teachings of the Seventh-day Adventist church's message and mission. He also testified regarding the formal agreement between Three Angels and the Church, and the willingness of Three Angels to air and advance the Church's religious programming. Wilson Test. 118-120. He testified as to the Three Angels video catalog and its wide promotion of programs by Church theologians, preachers and other leaders. Id. At 143-144. He also testified as to the regular worship service programs from Adventist churches aired on Three Angels, including worship programs from churches in Fort Worth, TX, Sacramento, CA, Battle Creek and Berrien Springs, MI. Id. 147-48.

Elder Wilson also testified to his personal viewing of Three Angels programming. Id. 130. He testified that "Three Angels ABN covers every aspect of church doctrine and is very much involved in showing all these aspects." Id. 128. He testified that Three Angels' programming was "very consistent with Seventh-day Adventist theology and outreach . . . [and] is very much in line with what the Seventh-day Adventist Church would believe . . ." Id.

Dr. Denis Fortin was the subject of offer of proof number five. OPT 28. Dr. Fortin is a professor of theology at the Seventh-day Adventist graduate Seminary at Andrews University in Michigan. He has specific expertise in the history of Seventh-day Adventist doctrine and religious teaching regarding health and lifestyle standards. He was prepared to testify regarding the manner in which Three Angel's health, nutrition and other lifestyle programming promoted the doctrinal and religious views of the Adventist

church. OPT 28. Dr. Fortin's report regarding these issues was submitted to the court as Exhibit No. 26.

Dr. Fortin had been disclosed to the other side during the discovery period. The state and interveners had also been provided with a copy of his report. They had chosen not to depose him. Three Angels had planned to call him as a live witness at the trial, but based on the state's and interveners pre-trial objections and the court's adverse rulings, he was not permitted to testify.

B. Evidence as to Tri-State Christian TV Relating to Equal Protection Claims.

The Department's argument that it has never decided whether or not a religious television station can be a tax-exempt ministry would be more convincing if the Department had not already granted such an exemption to a non-Adventist religious broadcast ministry almost identical to Three Angels. Tri-State Christian TV (WTCT-TV) is an Illinois not-for-profit organization that engages in religious broadcasting, and which receives a property tax-exemption from the State of Illinois. Evidence regarding this station and its operations, as well as Three Angel's court-thwarted attempts to obtain more information, was submitted as offer of proof number six. OPT 30.

Three Angels proffered evidence of Tri-State's tax exempt status OPT 33, its broadcasting-related properties OPT 34, its program topics and schedule, and its infomercials OPT 35. It was noted that Tri-State produced and aired a number of health and nutrition programs of the kind that the hearing officer below had labeled as "lifestyle" and "not religion" when aired by Three Angels. OPT 35. Offer of Proof number 7 was

an affidavit from Danny Shelton who had visited and witnessed the activities at WTCT-TV. OPT 38-39.

All evidence regarding Tri-State was excluded by the hearing judge. Further, during discovery, Three Angels was prevented from obtaining additional information about WTCT when its subpoena to depose the president of WTCT was quashed by the court. OPT 30. Had the evidence been allowed in by the court, Three Angels would have shown that it was treated differently than a similarly situated organization in violation of the religious freedom and equal protection guarantees of the Illinois and U.S. Constitution that prohibits discrimination based on religious grounds.

In a decision dated September 17, 2002, the hearing judge ruled that none of this evidence could come in because "this is not the proper forum to address constitutional challenges." Order of Sept. 17, 2002 p.3. For this proposition, she cited to *Texaco-Cities Service Pipeline*¹² This case, however, stands for basically the opposite of the proposition for which it is cited.

In *Texaco-Cities*, the Illinois Supreme Court refused to consider a constitutional argument on appeal because the issue had *not* been raised in the administrative proceeding.¹³ The Court noted that "issues or defenses not placed before the administrative agency will not be considered for the first time on administrative review."¹⁴ The Court recognized that "that administrative agencies lack the authority to invalidate a statute on constitutional grounds or even to question its validity."¹⁵

"Nonetheless," the court asserted:

¹² *Texaco-Cities Service Pipeline v. McGaw*, 182 Ill.2d 262 (1998).

¹³ *Texaco-Cities*, 182 Ill. 2d at 278.

¹⁴ *Id.*

¹⁵ *Id.* citing, *Moore v. City of East Cleveland*, 431 U.S. 494, 497 n. 5, 97 S.Ct. 1932, 1934 n. 5, 52 L.Ed.2d

it is advisable to assert a constitutional challenge on the record before the administrative tribunal, because administrative review is confined *to the proof offered before the agency*. Such a practice serves the purpose of avoiding piecemeal litigation and, more importantly, allowing opposing parties a full opportunity *to present evidence* to refute the constitutional challenge.¹⁶

Thus, the Illinois Supreme Court recognizes that evidence and proof relating to constitutional challenges should be heard and accepted by administrative courts, even if those courts cannot rule on the constitutionality of statutes. The hearing officer's failure to do this was plain, reversible, legal error. Her decision, if upheld, would make it impossible for Three Angels to assert its constitutional rights in any forum. This cannot be right, and thus her ruling on this matter should be reversed.

ARGUMENT

I. Contrary to the hearing judge's legal conclusions, the property used by Three Angels to undertake its religious broadcasting ministry is used for exclusively religious purposes and is exempt from property taxes under 35 ILCS 200/15-40 and 35 ILCS 200/15-65.

The court below has failed to take seriously Three Angel's religious purposes, thus preventing Three Angels from obtaining its rights under Illinois law to a tax exemption for the land and buildings used for its ministry. The Illinois Constitution provides that the state assembly may exempt from taxation "property used for . . . schools, religious, cemetery and charitable purposes." Ill. Const. Sec. 6, art. IX. Under this provision, the Illinois assembly has passed to laws that extend property tax exemption to land used for religious purposes. The first law exempts "property used

531, 536 n. 5 (1977).

¹⁶ *Id.* at 279 (emphasis added).

exclusively . . . for religious purposes.” 35 ILCS 200/15-40 (2001). The second law exempts “all property . . . exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to a profit” and which is owned by “institutions of public charity.” 35 ILCS 200/15-65 (2001).

In applying these two clauses to religious organizations, Illinois courts have said that the statutory sections “are so closely associated that we will discuss them together.”¹⁷ The analysis below will draw on both sections in showing that Three Angels is a not-for-profit religious institution that uses its properties exclusively for religious and charitable purposes.

Under Illinois law, two related questions are asked to determine if a religiously-based tax exemption is appropriate for a parcel of land. First, the court must decide if an entity has primarily religious or charitable purposes. (35 ILCS 200/15-40 (2001)). Second, it must then decide if the particular property in question is operated and used primarily for the religious purposes of that entity. *Id.* The manner in which the trial judge handled these questions is examined below. As in cases involving appeals from trial courts, these questions of law on appeal from an administrative finding are reviewed *de novo*.¹⁸

A. The lower court’s rejection of Three Angels’ view of its own religious purposes and the court’s use of a rigid and narrow definition of religious purpose is contrary to Illinois law and constitutes reversible error.

- 1. Illinois law permits entities to define their own religious purposes as long as done in good faith.**

¹⁷ *The Congregational Sunday School and Publishing Society v. Board of Review*, 290 Ill. 108, 112, 125 N.E. 7, 9 (1919).

¹⁸ See, e.g., *Wilson v. State Employee’s Retirement System of Illinois* 336 Ill.App.3d 199, 202, 782 N.E.2d 858, 861, 279 Ill.Dec. 299, 302 (2002), citing *Veazey v. Baker*, 322 Ill.App.3d 599, 602, 255 Ill.Dec.

The primary reversible error in the hearing judge's decision is her failure to accept, or even listen to, Three Angels' view of what constitutes its religious beliefs and purpose. Under Illinois law, a judge should not start with the State's view of what a religious purpose or activity is. Rather, the Court should start with the applicant's view of what its religion consists of, and then examine that view for sincerity and good faith. As the court stated in *Fairview Haven v. Dept. of Revenue*, the state "must accept the entity's characterization of its activities and beliefs as religious as long as the characterization is made in good faith."¹⁹

In examining the religious nature of an applicant, its activities or beliefs, the court properly deals with only two questions:

When, as here, particular purposes and activities of a religious organization are claimed to be other than religious, the civil authorities may engage in but two inquiries: does the religious organization assert that the challenged purposes and activities are religious, and is the assertion bona fide? Neither the courts nor administrative agencies . . . may go behind the declared content of the religious beliefs any more than they may examine their validity.²⁰

The decision in *Fairview Haven* has come to be recognized as definitive on the question of judicial inquiry into legal purposes. As one commentator on Illinois recently noted, *Fairview Haven* "represents the fullest and clearest expression in Illinois of the First Amendment principles implicitly followed in *Scripture Press* and explicitly recognized in *Holy Spirit*."²¹ Under these decisions, the state does not "define" religion,

¹⁹ *Fairview Haven v. The Department of Rev.*, 153 Ill. App. 3d 763, 772, 506 N.E. 2d 341, 348 (Ill. App. 4d 1987) (emphasis added).

²⁰ *Id.* at 772 and 348.

²¹ James W. Hilliard, "The 'Religious Purposes' Property Tax Exemption and the First Amendment," *Illinois Bar Journal*, Vol. 90, p. 549 (Oct. 2002), attached hereto as Exhibit A.

but inquires to make sure that the religion is not a sham, and that the property is “actually and primarily used for the stated religious purpose.”²²

Under these precedents, the hearing judge’s legal conclusions that Three Angels’ activities and beliefs were not religious constitute reversible error. Conclusions such as “the evidence shows that 3ABN directly engaged in little or no specifically religious activity and used the property in question for no such purpose” RD 30-31 and that “applicant is advocating a way of life but it is a lifestyle that applicant favors, not a religion” RD 31-32 ignores Three Angels’ belief, and those of leaders and theologians of the Adventist church, that it is promoting a *religious* lifestyle.

Because there are a wide variety of religious beliefs, practices and lifestyles, it should not be necessary for an applicant to show that the state of Illinois had previously accepted its beliefs and practices as religious for an exemption to be granted. The State should recognize and exempt a new or unique religious usage, as long as it is satisfied that the applicant is asserting its religious practice in good faith. Three Angels, however, presents no such unique or cutting-edge case. The activities and property uses that it carries out are well within standard religious purposes recognized by existing Illinois judicial and administrative case-law, as discussed below.

2. Illinois courts have found religious purposes to include a wide variety of activities that transmit religious teachings and beliefs through various media, such as print, audio, video and radio and television broadcast.

Three Angels’ communication of its religious messages through print, audio, video and broadcast media are the very type of activities found to be religious by Illinois

²² *Id.* at 551.

courts.²³ A very early case, *The People v. Deutsche Evangelisch Luterische Jehovah*,²⁴ referred to “religious purpose” of property as consisting of “public worship, Sunday Schools and religious instruction.”²⁵ Three Angels’ operations arguable fit even this somewhat narrow definition of religious purpose, as its primary purpose is “religious instruction” through the broadcast of religious programming. But later cases have broadened the category of activities that fulfill a religious purpose.

The Illinois Supreme Court has noted that the definition found in *Dutsche Evangelisch* is unduly narrow, and that it was “not stated as inclusive of everything that might in the future be regarded as a use for religious purposes but as *illustrative of the nature of such use*.”²⁶ Later, the Court noted that “no decision of this court attempting to lay down an all inclusive definition or specification of what constitutes a religious purpose” has been called to its attention, even though it was familiar with the *Deutsche Evangelisch* decision.²⁷

In light of these decision clarifying and expanding *Deutsche Evangelisch*, it is rather extraordinary that the hearing judge continues to rely primarily, if not at times exclusively, on that narrow definition. RD 24-25. She states that “because *Deutsche Gemeinde* explains that a religious purpose means a use of such property by a religious society or body of persons as a state place for worship, Sunday schools and religious instruction, the question of whether applicant uses the property for religious purposes must be answered in the negative. Applicant unequivocally fails to satisfy this statutory

²³ *Carson v. Muldoon*, 306 Ill. 234, 238, 137 N.E. 863, 864 (1922); *Scripture Press Foundation v. Annunzio*, 414 Ill. 339, 350-352, 111 N.E.2d 519, 525 (1953).

²⁴ *The People v. Deutsche Evangelisch Luterische Jehovah*, 249 Ill. 132, 136-37, 94 N.E. 162, 164 (1911).

²⁵ *Id.*

²⁶ *Carson*, 306 Ill. At 238, 137 N.E. at 864.

²⁷ *Scripture Press Foundation v. Annunzio*, 414 Ill. at 350-352.

mandate.” RD 31. She then proceeds to examine and reject as inadequate Three Angel’s on-site worship activities.

The lower court’s ruling essentially ignores a large number of decisions by Illinois courts that viewed a “religious purpose” as far broader than a tradition Sunday morning church service. The buildings and activities that have qualified for exemption include: the administrative office buildings of an organization that supported Sunday schools by publishing and distributing Bible lesson supplies, quarterlies and lesson helps, as well as other religious and moral books;²⁸ Inter-Varsity Christian Fellowship, a group that helped organize Christian student groups at secular colleges and universities and which published and sold Christian literature;²⁹ the Evangelical Teacher Training Association, a group formed by various Christian schools to produce audio, visual and other materials to train Christian educators;³⁰ and a 1.6 acre portion of a tax-exempt religious park, upon which stood a residence for the park care-taker and his wife, upon which horses grazed, and upon which religious services were conducted.³¹

Many of the above cases involve the spreading of religious messages through the production and sale, even at a “profit,” of various media. While often print media, some of the cases deal with various types of audio and visual media. All the cases define “religious purpose” far more broadly than the traditional worship services allowed by *Deutsche Evangelisch* and the hearing judge below.

²⁸ *The Congregational Sunday School and Publishing Society v. Board of Review*, 290 Ill. 108, 125 N.E. 7 (1919).

²⁹ *Inter-Varsity Christian Fellowship v. Hoffman*, 62 Ill. App. 3d 798, 379 N.E.2d 813 (Ill. App. 2d 1978).

³⁰ *Evangelical Teacher Training Ass’n v. Novak*, 118 Ill. App. 3d 21, 454 N.E.2d 836 (Ill. App. 2d. 1983).

³¹ *Ill. Confer. Of the United Church of Christ v. Ill. Dept. of Rev.*, 165 Ill. App.3d 200, 518 N.E.2d 755 (Ill. App. 3d 1988).

Based on the precedents discussed above, the hearing judge applied an erroneous legal standard to decide whether Three Angels was a religious entity and whether it used its property for primarily religious purposes. There are sufficient undisputed facts in the record, summarized from pages four to nine above, to show that Three Angels *is* a religious entity operated primarily for religious purposes for this Court to reverse the lower judge's legal conclusions and enter a judgment for Three Angels on this question. Short of this, this Court should reverse the hearing judge's ruling, clarify the legal standards involved, and remand the case for further testimony by the excluded witnesses Elder Ted Wilson and Dr. Denis Fortin.

B. The lower court erred in concluding that Three Angels did not use its property primarily for religious purpose, as revenues from its properties do not inure to any private person, it supports a wide range of missionary activities, and it provides its broadcast services at or below cost.

Three Angels used the properties at issue in this case, its administrative and operational center, its carpenter shop, and call center in a manner consistent with the religious purposes discussed in the statement of the case and Section A above. Under Illinois law, the requirement that property be used "exclusively" for religious purposes means "the primary purpose for which the property is used, not to any secondary or incidental purpose."³² Thus, an entity whose activities on a property are primarily in furtherance of religious purposes will not lose its tax-exempt status if there is some minor, incidental or secondary use of the property for non-exempt purposes.³³

³² *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2d 149, 158, 233 N.E.2d 537, 542 (1968).

³³ *Evangelical Hospitals Corp. v. Dept. of Rev.*, 223 Ill. App.3d 225, 231, 584 N.E.2d 1004, 1008 (Ill. App. 2d 1991).

Further, space used for administrative, maintenance, or storage purposes will be exempt if these uses are integral and necessary to the exempt purpose.³⁴ At the trial, the interveners attempted to dissect the administrative facility into square-foot blocks broken down by specific purposes, such as administrative use, production studios, advertising, etc. TT 234. The hearing judge did a similar thing when she ruled that the pastoral offices were exempt, but the rest of the facilities were not. RD 3. But these distinctions are inappropriate, as long as all the uses relate to and support the primary religious purposes of Three Angels.

As one Illinois court put it, "Illinois courts have held that property used as hospital administrative and support services, property used as a hospital employee parking lot . . . and property used as a child-care center serving employees of a tax-charitable hospital all qualify for the property tax exemption."³⁵ If the hearing judge below was correct in her division of Three Angels property, then hospitals would only have their emergency rooms, patient wards, and other patient care areas exempt, and would pay taxes on parking lots, maintenance rooms, and cafeterias. But this is not the approach Illinois courts have taken, and this Court should not take that approach with Three Angels' property.

In Illinois, one determines if a religious entity is operating according to its religious purposes, both generally and in relation to a particular property, by looking at two things:

³⁴ *Evangelical Hosp. Ass'n v. Novak*, 125 Ill. App. 3d 439, 465 N.E. 2d 986 (Ill. App. 2d 1984) (administrative and storage space that was supportive of religious purposes was tax exempt).

³⁵ *Mount Calvary Baptist Church v. Zehnder*, 302 Ill. App.3d 661, 672, 706 N.E.2d 1008, 1016 (Ill. App. 1d. 1998).

one, how the entity is organized, and two, "the actual facts relating to its method of operation."³⁶

In examining religious charities, the courts have found a number of factors to be relevant to whether there is exclusive operation for charitable purposes. These factors were helpfully summarized for religious ministries in the case of *Inter-Varsity Christian Fellowship*, where the court noted certain "specific and vital" factors relevant to Inter-Varsity's exempt status.³⁷ These included:

- 1) It was organized as a not-for-profit corporation with a charter dedicated exclusively to religious and charitable purposes;
- 2) None of its revenue inured to the benefit of any private person and, upon dissolution, any capital surplus, if any, must be distributed to another charitable organization;
- 3) It supported missionaries and served the needs of an evangelical movement;
- 4) It provided a substantial amount of materials free or below cost to groups which were targeted for its message.

A fifth factor that has emerged from the cases is that relating to revenue of charitable organizations. As more fully discussed below, this factor is basically whether:

- 5) Any net revenue from sales by the organization are secondary and incidental to the exempt purpose, the sales are of items that further the organization's purpose, and the excess revenue is used in the furtherance of the entity's charitable purposes.

The evidence, even those facts considered undisputed, showed that Three Angels meets these five factors.

³⁶ *Evangelical Teacher*, 118 Ill. App. at 25, 454 N.E. 2d at 838.

³⁷ *Inter-Varsity Christian Fellowship v. Hoffman*, 62 Ill. App. 3d 798, 802-03, 379 N.E.2d 813, 817 (Ill.

Factor One – Organized and dedicated to a charitable or religious purpose.

First, Three Angels' Articles of Incorporation state that its purposes will be those of a purely religious or charitable not-for-profit organization. RD 5; TT 53-55, Appl. Exh. 2. The Articles then state that Three Angels will “develop, plan, promote, produce and direct in cooperation with various religious organizations, all types of religious programming for electronic transmission for television and radio broadcasting throughout the world.” *Id.* at Sec. 1.2(a).

Factor 2 – No Personal Inurement and a Dissolution Clause

Second, Three Angels' Articles state that none of its net earnings shall “inure to the benefit of . . . its members, trustees, directors, officers or other persons.” *Id.* at 1.2(I)(I). Further, the governing documents require that, upon dissolution of Three Angels, all assets shall be distributed to organizations that are “organized and operated exclusively for charitable, religious, educational scientific purposes” and are not-for-profit organizations under federal law. TT 60-61, Appl. Exh. 3. There was some confusion on the existence of a dissolution clause in the hearing judge's initial opinion, but in a later ruling, she recognized that one existed. OPR 2.

The hearing judge's concerns with the topic of inurement is twofold. First, she mistakenly held that Three Angels does not have an independent board, and the organization is basically a closely held business of the Sheltons. RD 7, 35. Pages 11 to 13 above detail the plain factual error of this conclusion, including testimony by Dr. Walter Thompson, the board chairman, Elder Ken Denslow, Adventist leader and board member, Larry Ewing, CPA and Three Angels treasurer, and Alan Lovejoy, independent accountant with Gray, Hunter and Stenn, LLP, Accountants.

App.2d 1978).

Second, she mistakenly concluded that Linda Shelton, Three Angels vice president, received royalties from Three Angels for music CDs. Once again, as described in pages 15 to 16 above, there is no evidentiary basis for this application of law to fact. Linda received no royalties from Three Angels, but received de minimis royalties of \$20 or so from a third party with no connection with Three Angels from the licenses to her songs, which were her personal property. Once again, the hearing judge's application of fact to law on this point were in error.

Given these points, this Court should find that Three Angels meets the no inurement standard. It should reverse the lower court's legal conclusion on this point, and reject the hearing judge's legal conclusion that Three Angels' profits goes to the personal inurement of private persons.

Factor 3 – Missionary Activity and Support of an Evangelical Movement

Three Angels broadcasting has a close association with the Adventist Church. Adventist leaders and pastors are on its board, including the current president of the Illinois Conference of Seventh-day Adventists. TT 93-94. All the board members are active members of the Adventist church. TT 92. Danny Shelton is an ordained elder and serves as a lay minister of the Adventist church. TT 38.

Further, the evidence overwhelmingly shows that Three Angels supports and directly carries out missionary activity. It purchased property and buildings in Russia to serve as church building and offices as well as a religious broadcast center. TT 133-134. It pays the salaries of the 30 to 40 employees who operate the religious broadcast ministry in Russia. T 134, 188. It also similarly owns and operates a religious broadcast ministry in

the Philippines. The facility there employs about ten full-time employees and broadcasts religious programs to a potential audience of 20 million people. TT 135.

But not only does Three Angels support missionary activity, it directly carries it out. As more fully described above in pages 20 to 22, Three Angels leadership is actively involved in preaching, praying, and praising in churches throughout America and overseas. The Three Angels team has conducted a number of direct evangelism preaching campaigns resulting in many baptisms, including 15,000 in India and a similar number in Russia in 2000 and 2001. TT 136.

These facts, along with the close relationship between Three Angels and the Seventh-day Adventist Church, a growing worldwide evangelical movement, as described above at pages 4 to 7, support the finding that Three Angels meets the criteria of factor three. This Court should reject any legal conclusions made by the hearing judge to the contrary.

Factor 4 – Reduced or No-Cost Benefits to the Public

The evidence at trial demonstrated that Three Angels gives away, at no charge, a significant amount of religious literature, videos, audio tapes and other materials. TT 171, 172, 182, 186; Appl. Exh. 18-21. Everyday, free material is promoted and made available to the public on a variety of spiritual and religious topics, including healthful living and finding spiritual peace. TT 171. Every Thursday, there is a special, two-hour program called *3-ABN Presents*, where there is always a free give-away. TT 172. During 2000, Three Angels sold its satellite dishes at their materials cost, which represented a loss to Three Angels because of the overhead and administrative expense associated with the sales. TT 325. During 2001, the dishes were actually sold at \$50 less than their materials cost to Three Angels. TT 325-326. Indeed, a number of satellite

dishes were given away in both 2000 and 2001 to callers who showed significant financial hardship. TT 300.

Even for books and materials that are listed for a modest sale price, Three Angels will further discount the price or give the items away if callers are unable to afford them. TT 169-170. Further, its charges for air-time programming are set to cover costs, not to make a profit, and even these prices are frequently adjusted downward based on a participating ministry's ability to pay. TT 160-162. Indeed, some participating groups or ministries are given airtime at no charge. TT 106-108.

The items that Three Angels gives away and/or sells at or below cost are further detailed above at pages 6-7, 9, 17-19. The clear factual record, further set out at pages 8 to 10 above, is that Three Angels gives away a significant amount of material and airtime. Those items and airtime that Three Angels sells, it does so at or below cost. There is no evidence in the record to the contrary on either of these points. Thus, this Court should conclude that Three Angels provides at-or-below-cost materials and benefits to the public.

Factor 5 – Any net revenue is incidental to, and used to further, Three Angels' religious purposes and mission.

Fifth, the evidence will show that net revenue, if any, from sales is an incidental and secondary form of revenue that accounts for only a few percent of Three Angel's total revenue. TT 139; Appl. Exh. 14 & 15. The Illinois Supreme Court has rejected the notion that a revenue stream from sales that is greater than the associated expenses, a net profit, will disqualify an organization from being a tax exempt, "not-for-profit" entity.

Rather, the Court has noted that the “determining feature of a ‘profit’ with respect to a charitable institution is whether there is inurement of benefit to a private individual.”³⁸

In *Du Page County*, the Court noted that the state erroneously believed that if a not-for-profit organization accumulates funds beyond their obligations, that a “fund balance ceases to be a fund balance and becomes a ‘profit.’”³⁹ The Court rejected this notion. It pointed out the foolishness of insisting that “not-for-profit” organizations must literally have “no profit” on their sale of items, thus maintaining minimal or non-existent fund balances. “Conditioning tax exemption on high-risk money management,” the court asserted, fails to serve the interests of charitable organizations and their beneficiaries.”⁴⁰

But this is precisely what the hearing judge requires of Three Angels in the present case. She claims that “financials statements prove that applicant netted a profit during the years at issue.” RD 38. She states that the size of the surplus, about 1.2 million in 2000, and 1.9 million in 2001, disqualifies Three Angels as being a “not-for-profit” entity. RD 38. What the hearing judge overlooked was that compared to Three Angels operating expenses, this revenue margin was actually quite slim. With operating costs at about 1.2 million *per month*, these yearly surpluses represent merely one to two months in operating costs.

The hearing judge included in the revenue totals a combination of sales revenue and charitable donations. When the sales revenue is looked at separately, it becomes clear, as testified to by both Three Angels treasurer Larry Ewing, as well as independent auditor

³⁸ *Du Page County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations*, 274 Ill. App.3d 461, 470, 654 N.E.2d 240, 246 (Ill. App.2d 1995).

³⁹ *Id.* at 470, 948.

⁴⁰ *Id.* at 470-71, 948.

Alan Lovejoy, that Three Angels did not make a "profit" from the sale of airtime or other materials. TT 444, 476-477.

Three Angels fits well within existing Illinois caselaw on the issue of revenue production. In *Inter-Varsity*, the court rejected the state's contention that "inasmuch as profits are made from the sale of the literature, this is a non-exempt operation of a charitable or religious organization."⁴¹ The court ruled that "it was not the use to be made of the profits, but the nature of the business done that should be considered in deciding questions of liability of a charitable institution's property to taxation."⁴²

In *Evangelical Teacher*, the court noted that the applicant did not produce materials "to be distributed free of charge." Rather, it at times would donate course and text materials to mission schools and then offset these losses by "income from 'high volume textbook' sales."⁴³ Clearly, these "high volume textbook sales" were made at more than cost and generated a positive income stream, yet this was not a disqualifying "profit."

A similar case to the instant one is *Congregational Sunday School*, where applicant sold books at a "sufficient charge to cover the expenses of this work."⁴⁴ The court noted that it was difficult to determine if a profit was made in any given year. "Some years the business is operated at a profit and some years it is operated at a loss," although it is impossible to tell "what the expenses will be each year."⁴⁵ But the important point was that "such profits as do come from the business of selling books and periodicals are devoted to the maintenance of the missionary department. . . . The purposes of the

⁴¹ *Inter-Varsity*, 379 NE.2d at 816.

⁴² *Id.*

⁴³ *Evangelical Teacher*, 118 Ill. App.3d at 23, 454 N.E.2d at 838.

⁴⁴ *Congregational Sunday School*, 290 Ill. at 110-111, 125 N.E. at 9.

⁴⁵ *Id.*

[applicant] are directly carried out by the distribution of its books and supplies, and the receipt of the money from the sales is incidental and secondary."⁴⁶

Very similarly, it may be difficult to pinpoint precisely what "profit" or "loss" Three Angels takes on sale of airtime, satellites, books, or materials. The testimony was that these items were sold either at cost, or at a loss. TT 161, 166-167, 169-170. But even if some small "profit" was realized on these items at times, that revenue was "incidental and secondary" to the intent of the sales, which was to spread the religious message of Three Angels through printed materials, audio and video broadcasts, and videos and CDs.

The evidence at trial showed clearly that profit, when it existed at all, was very incidental. Gross revenue from satellite dish sales was \$2.6 million in 2000, but the costs of satellite dishes to Three Angels that year was nearly \$3 million. Appl. Exh. 14, p. 200019 and 200026. Thus, Three Angels took a \$400,000 loss that year on satellite sales. In 2001, as sales caught up with inventory, there were \$600,000 in sales, and about \$400,000 in dish costs, representing a net "profit" of \$200,000. Appl. Exh. 14, p. 4 and 12. But that still did not make up for the \$400,000 in losses from the previous year. Indeed, other costs associated with satellite sales in 2001, including salaries and shipping meant that even for that year there was no net revenue. TT 446-450.

The situation in regards to sales of tapes, videos, CDs and books was very similar. Gross revenue from these items was about \$150,000 in 2000 and about \$250,000 in 2001. Appl. Exh. 14 p. 4 and Exh. 15 p. 4. Evidence at trial showed that the cost of goods sold were likely at least as much, factoring in overhead and administrative expenses associated with making, selling, and distributing goods. TT 453. It is quite unlikely that

⁴⁶ *Id.*

any net revenue, or actual profit, was received from any goods sold. Certainly this is true in the aggregate. Appl. Exh. 14-15.

But even if one assumes there was no overhead or costs of goods sold, which was obviously not the case, the revenue generated from these sales was only one to two percent of total revenue for both years, which was \$14.5 million for 2000 and \$14.5 million for 2001. TT 139. This revenue from sales is patently "secondary and incidental" to that associated with direct charitable contributions to Three Angels, which makes up about 80% of total revenue. TT 140.

Likewise, revenue associated with fees from airtime and production fees, about \$600,000 in 2000 and \$850,000 in 2001, represent about 4% and 6% respectively of total revenue. Appl. Exh. 14 p. 4 and Exh.15 p. 4. Once again, this is dwarfed by the income generated from directly charitable donations and gifts, which was between \$11 million and \$13 million during those years. *Id.*

All the items sold by Three Angels, including religious books, CDs, videos and tapes relate directly to Three Angel's religious mission and purposes, as they all have a religious content and message. TT 517, 597-599. Even the satellite receivers that Three Angels sells have a direct religious connection, as the dishes only receive religious broadcasting. TT 164. Three Angels sells two types of receivers, one that only receives Three Angels' broadcasts, and a second that receives Three Angels' programming along with that of a few other religious, family oriented stations. TT 164-165.

The facts show that Three Angels receives no net revenue or profits from its sales. But even if it were to receive some small profit, and even if this Court were to decide that satellite sales did not further Three Angels' religious purpose, the satellite sales should be

viewed as secondary and incidental to Three Angels' total activities and revenue that do not detract from the exempt status of the property. "When the property as a whole, or in unidentifiable portions, is used both for an exempt purpose and a nonexempt purpose, the property will be wholly exempt only if the *exempt use is primary and the nonexempt use is incidental.*"⁴⁷

Three Angels' use of revenue from sales, insofar as they exceed the costs of sales, goes only to further the ministry and religious message of Three Angels.

Conclusion

The evidence is overwhelming and, as importantly, uncontradicted, in support of the not-for-profit, religious nature of Three Angels and its use of the subject properties for religious purposes. Three Angels was organized and is operated for religious, charitable exempt purposes. Its formational documents allow for no personal inurement, and there was no evidence of any such inurement. Rather, there was direct testimony on this point both by Three Angels internal treasurer, and independent, external auditor, who both agreed that no such inurement took place. The governing documents also require that upon dissolution, Three Angels' remaining assets will be distributed to a similar, not-for-profit organization. Three Angels is a missionary organization that runs and supports direct missionary efforts, as well as supporting the message and mission of the Seventh-day Adventist church, a world-wide, evangelical movement. Three Angels gives away significant amounts of free material, including books, CDs, and tapes, as well as more substantive items, such as satellite dishes and even broadcast airtime. Net revenue, if

⁴⁷ *Evangelical Hospitals Corp. v. The Department of Revenue*, 223 Ill. App. 3d 225, 231, 584 N.E.2d 1004, 1008.

any, received by Three Angels is entirely secondary and incidental to the mission of Three Angels in getting its religious message out.

Requested Relief

For these reasons, the decision of the hearing judge should be reversed, and this Court should grant Three Angels a tax exemption for the properties at issue in this case for the years 2000 and 2001.

Alternatively, this Court should correct the lower court's legal rulings regarding the legal standard of religious purposes, and should remand the case for the hearing judge to consider the testimony of Dr. Denis Fortin and Elder Ted Wilson in arriving at a conclusion regarding the religious nature and activities of Three Angels. If this approach is taken, this Court should also correct the factual mistakes made by the hearing judge concerning the make-up of the Three Angels board and the issue of personal inurement to Danny and Linda Shelton, which is supported by no evidence. Further, Three Angels should be given the opportunity to take the discovery it was seeking on the constitutional issues, including subpoenas and depositions of WTCT-TV, and to present that evidence before the hearing officer.

THREE ANGELS BROADCASTING NETWORK, INC.

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing Opening Brief of Appellant Three Angels Broadcasting Network, Inc. was mailed on the 8th day of March, 2005, by depositing said copies in a pre-addressed, postage prepaid envelope in the United States Mail at a Post Office Box in the City of West Frankfort, Illinois, addressed to the following addresses:

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