

CORPORATIONS: IN RE: The District No. 2, Missouri State Nurses'
LICENSES: Association is not a charitable organization
Nurses Assn. and is subject to licensing under Sections
10161 to 10164, R. S. Mo. 1939.

September 11, 1946



Mr. Lon N. Irwin, Commissioner
Department of Labor and Industrial
Inspection
Jefferson City, Missouri

Dear Mr. Irwin:

This will acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question: Should the District No. 2 State Nurses' Association be required to comply with the license requirements of Section 10161, R. S. Mo. 1939?

Section 10161 is in Article 2, Chapter 68 of the Revised Statutes of 1939, and reads, in part, as follows:

"Sec. 10161. Employment offices or agencies to obtain licenses--license fees, etc.

"No person, firm or corporation in this state shall open, operate or maintain an employment office or agency for hire, or where a fee is charged to either applicants for employment or for help, without first obtaining a license for the same from the state commissioner of labor and industrial inspection. * * *"

Section 10164, R. S. Mo. 1939, reads as follows:

"Free employment bureaus exempt

"The free public employment bureaus organized and established, or to be organized and established in this state by the commissioner of labor and industrial inspection, or charitable organizations, shall not be subject to the provisions of the three preceding sections."

Under the broad wording of Section 10161, supra, we think there

is no question but that the Nurses' Association would be subject to the provisions of that section unless it is a charitable organization and, therefore, exempt under Section 10164, supra. The legal issue to be determined is, therefore, whether the District No. 2 Missouri State Nurses' Association is a "charitable" organization.

In a very recent decision of the Supreme Court of Missouri in the case of the Evangelical Lutheran Synod of Missouri vs. Hoehn handed down on August 1, 1946, wherein the nature of a charitable organization was discussed, the court speaking through Ellison, J., stated that whether an association is charitable is to be determined by the articles of association and by what the association's activities under its charter have been. The court further said that the primary objective in any search to determine the nature of such institution should be a determination of the main purpose of the association considering it is a single unit. This case has not been reported as yet, therefore, it is impossible to give any citation.

With these cardinal rules for the determination of the nature of a charitable institution before us, we proceed to an examination of the facts with regard to the Nurses' Association. The petition for a pro forma decree of incorporation in the Circuit Court of Jackson County, Missouri, September Term, 1911, stated the purposes of the organization to be the following.

"(a) To maintain the highest standard of the nursing profession.

"(b) To maintain a code of ethics.

"(c) To be and constitute a nurses' club for the promotion of friendship and fellowship among nurses and for such benefits as may be derived from organized help and encouragement of any kind whatever, whenever needed among the members.

"(d) To found and maintain, out of the dues of the membership, a central directory of nurses for the convenience of physicians and the public generally, in readily locating a nurse whenever one is needed.

"(e) To found and sustain a library for the benefit of the members.

"(f) To engage in any other activity appertaining to any of the objects and purposes above enumerated, or to promote any undertaking, within the provisions of Article X, Chapter 33, Revised

Statutes, 1909, that may have for its object the promotion or betterment of service to the public generally to the end that the sick and afflicted may best be cared for and their welfare best preserved."

In examining the above, it will be noted that the only purpose which the charter states is solely for the benefit and convenience of persons, other than members of the Association, is paragraph (d). The entire unit purpose of the Association is to maintain cooperation, standards and promote the welfare of registered nurses. Even if purpose (d) were to be considered as indicating the charitable nature of the directory, we would have to disregard that fact here since the directory in question is, by the admission of the Association, not maintained out of the "dues of the membership" of the Association, but those nurses on the directory must pay a fee of \$16.00 in order to be placed upon the directory and must, in addition, pay a certain portion of their salary when employment is found for them. The present registry is, therefore, not being conducted in accordance with the charter provisions.

The activities of the Association have very substantially followed their charter rights in so far as we have been able to determine from the attached correspondence. We take it from said correspondence that the only deviation has been the failure to maintain the registry solely out of the dues of the membership of the Association.

We think, therefore, that the charter of the Association does not grant to the Association powers and rights which would result in placing it within the category of charitable associations. Since, with but one exception, as far as we have been able to determine, the activities of the Association have followed their charter powers and since this one exception falls toward the non-charitable rather than the charitable side of the scales, we think the activities of the Association cannot be said to be of a charitable nature.

In *Salvation Army v. Hoehn*, (1945) 188 S. W.(2d) 326, the Supreme Court of Missouri, in discussing the charitable nature of the Salvation Army, quoted with approval the following definition of a charity:

"Probably the most comprehensive and carefully drawn definition of a charity that has ever been formulated is that it is a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence

of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. * * *"

Thus, a charity is a gift. We think there is nothing in the nature of a gift resulting from the operation of the nurses' registry. We fully realize the benefit to the physicians and to the public which is undoubtedly inherent in the operation of the same, but with all due respect and admiration for the nurses' profession, and for the purpose of the Association, we think that the primary purpose of the registry is to obtain employment for the members of said registry. To state it another way, we think the registry is not in the nature of a gift for the benefit of any group of the public but is for the purpose of better promoting the welfare of the registered nurses of the District No. 2, Missouri State Nurses' Association.

In writing this opinion we are not unmindful of *Salvation Army v. Hoehn supra*, *Eads v. Y. W. C. A.*, 29 S. W. (2d) 701, 325 Mo. 577, and other similar cases in which the court has held that such associations and organizations were not subject to property taxes because they were charitable in nature. These cases can be distinguished in that the organizations involved were all organized for the purpose of reaching out and aiding some part or all of the public. This purpose is found stated in the charters and is apparent in the activities of said organizations. As we pointed out above, we think this cannot be said of the District No. 2, Missouri State Nurses' Association, although there is undoubtedly an incidental benefit to physicians and the public through the operation of the Central Nurses' Registry.

CONCLUSION

It is, therefore, the opinion of this department that the District No. 2, Missouri State Nurses' Association is subject to the provisions of Article II, Chapter 68, Sections 10161 to 10165, R. S. Mo. 1939.

Respectfully submitted,

SMITH N. CROWE, JR.
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APPROVED:

J. E. TAYLOR
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SNC:mw