

Taxation: The Robinson Clinic, Inc. *not exempt* from the  
Sales Tax: provisions of the 2% Sales Tax Act.

September 23, 1937.

Hon. W. W. Graves,  
Prosecuting Attorney  
Jackson County,  
Kansas City, Mo.

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Attention: Mr. Samuel S. Shapiro.

Dear Sir:

This office acknowledges receipt of yours of September 17, 1937 requesting an official opinion from this department as to whether or not The Robinson Clinic, Inc. of Kansas City, Missouri is within the exemptions set out in Section 46 of the Sales Tax Act, Session Act 1937, page 568, and attached to said request was an "outline of the facts" set out by The Robinson Clinic, Inc., which outline is as follows:

**THE ROBINSON CLINIC, Inc.**

1-Incorporated in Jackson County, Missouri on January 3, 1934 under the act relative to charitable corporations, Article X of Chapter 32 of R. S. Mo. 1929.

2-The Robinson Clinic, Inc. owns and operates the Neurological Hospital, located at 27th & Paseo, in Kansas City, Missouri, affording hospitalization to nervous and mental patients. The hospital is available to charity patients and the patients of any reputable doctor.

3-The following figures are those of the various hospitals in Kansas City, Missouri as submitted to the American Medical Association for the year 1936, showing the comparative charitable use of each:

	FREE	PART PAY	FULL PAY
Neurological Hospital	7%	33%	60%
Menorah Hospital	4%	26%	70%
Research Hospital	3%	--	97%
St. Joseph's Hospital	18%	17%	65%
St. Luke's Hospital	6%	23%	71%
St. Mary's Hospital	16%	17%	67%
Trinity Lutheran	1%	10%	89%

These figures show that the Neurological Hospital carries a greater percentage of

part pay patients than any of the other hospitals, and a greater percentage of free patients than four of the seven listed.

Free patients are defined as those paying nothing. Part pay patients are defined as those who do not pay sufficient to compensate for their keep; they are an actual loss.

4-The top salary paid to any individual is \$100 per month. No profits are paid to any individual; what profits there have been so far have been put into the purchase of equipment and purchase of the building.

5-The Neurological Hospital is fulfilling a civic purpose and need; and unquestionably relieving the state of the care of patients who would otherwise be in a state institution.

If that institution is exempt from the provisions of this Act, it is by virtue of the provisions of Section 46 of said Act, which is as follows:

"In addition to the exemptions under Section 3 of this Act there shall also be exempted from the provisions of this Act all sales made by or to religious, charitable, eleemosynary institutions, penal institutions and industries operated by the Department of Penal Institutions or educational institutions supported by public funds or by religious organizations, in the conduct of the regular religious, charitable, eleemosynary, penal or educational functions and activities, and all sales made by or to a State Relief Agency in the exercise of relief functions and activities."

If The Robinson Clinic, Inc. is within the class exempt by said Section, it will have to fall within one or more of the following classifications of said Section, to-wit:- A charitable institution or eleemosynary institution.

In determining this question it has been necessary to make an examination of the Certificate and Articles of Incorporation of said corporation, and we find that said clinic was incorporated under Article X, Chapter 32, R. S. Mo. 1929 for the following purposes:

"To own, operate and conduct a charity and pay hospital, a school for teaching the vocation of nursing, an asylum for the care, education and maintenance of orphans and indigent persons and also other enterprises of a benevolent and charitable nature; to furnish medical aid and surgical aid to such persons as may, under regulations prescribed by the Board of Directors Association, become attendants at said school, patients or inmates of said hospitals, asylums or any other benevolent and charitable enterprises, conducted by said association; to take, hold, alienate, mortgage and convey real and personal property; to borrow money and execute notes, bonds, mortgages and deeds of trust securing the payment of same on any property owned by said corporation; to receive, accept and retain any trust, the purposes whereof is within objects of the association and may receive and take any deed, bequest or devise in its corporate capacity any property, real and personal, for the uses and purposes of such trust and execute the trust so created; to invest and reinvest its money; and to sell, let or lease its property for the purpose of the proper exercise of its power herein granted."

An alleged constitutional or statutory grant of exemption from taxation will be strictly construed. 61 C. J., page 392, para. 396; State ex rel. Y. M. C. A. v. Gehner, 11 S. W. (2d) 30.

A Claim for exemption cannot be sustained unless it is thoroughly found to be within the letter and spirit of the law. Readlyn Hospital v. Hath, 272 N. W. 1. c. 92.

We find from the "outline of the facts" attached to your letter requesting this opinion that the business of The Robinson Clinic, Inc. for the year 1936 consisted of 7% free patients, which service would be classed as purely public charity; that 33% of said business was partly paid or was from those from whom not sufficient pay was received to compensate the hospital for their keep and would be classed as partly public charity subjects; and that 60% of the business of said institution was from patients who paid the full amount of the charge for their treatment and to whom charity does not apply.

Under the foregoing rule of strict construction of exemption statutes, the character of the charity referred to in the foregoing exempting section, should be a purely public charity.

We find that The Robinson Clinic, Inc. was incorporated under the Act of the Missouri Statutes relative to charitable corporations, however the taxing authorities are not bound by the Articles incorporating an institution, if its activities are not within the purposes for which such institution is incorporated. 61 C. J., page 459, Section 513; Benjamin Rose Institution v. Meyer's, 110 N. E. 924:

"To be entitled to exemption, an institution must be purely charitable and where its primary activities are other than charitable and its charitable activities are subordinate and incidental, it is not entitled to exemptions as a charitable or benevolent institution." 61 C. J., page 455, Section 505; 61 C. J., page 459, Section 514.

Although The Robinson Clinic, Inc. has been incorporated under the Act relative to charitable corporations and the "outline of the facts" included with your request reveals that this clinic owns and operates the Neurological Hospital which does some charitable work, the rule is that even though an institution may be incorporated as a charitable institution, yet if a substantial portion of its activities is not charitable, it cannot claim exemptions from taxation. (see cases cited supra). It further appears that 7% of the patients cared for by this clinic are those who would be termed as purely public charity patients, while 60% of the patients are full

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page patients for whom the exemption, on account of being charitable patients would not apply, and 33% of the patients pay some of the amount, but not sufficient to compensate the institution for their keep.

CONCLUSION

In view of the foregoing rules of strict construction of Tax Exemption Statutes and the fact that only a small percent of the patients of The Robinson Clinic, Inc. are charity patients, it is the opinion of this Department that said clinic is not exempt from the provisions of the 2% Sales Tax Act.

Respectfully submitted,

TYRE W. BURTON  
Assistant Attorney General.

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney-General.

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