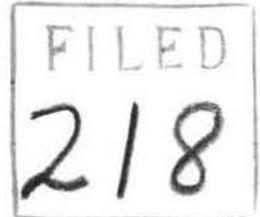


BI-STATE DEVELOPMENT AGENCY: The property of the Bi-State
TAXATION: Development Agency, used for
EXEMPTION FROM TAXATION: the well-being, welfare and
CHARITIES: convenience of the Bi-State
CHARITABLE USE OF PROPERTY: Metropolitan Development Dis-
trict, is exempt from taxation.

Opinion No. 218

December 30, 1964



State Tax Commission of Missouri
Jefferson Building
Jefferson City, Missouri

Gentlemen:

You have requested the opinion of this office with respect to whether the real and tangible personal property of the Bi-State Development Agency of the Bi-State Metropolitan Development District, is exempt from taxation under Missouri law.

The Bi-State Metropolitan Development District was established in 1949 by an interstate compact entered into by the states of Missouri and Illinois with the approval of Congress. The district embraces the City of St. Louis and the counties of St. Louis, St. Charles and Jefferson in Missouri, and the counties of Madison, St. Clair and Monroe in Illinois. The object of the compact was to provide for the future planning and development of the district "holding in high trust for the benefit of its people and for the nation the special blessings and advantages thereof".

The compact also created the Bi-State Development Agency as "a body corporate and politic" to make plans for the development of the district and with power to plan, construct, maintain, own and operate bridges, tunnels, airports, and terminal facilities. Section 70.370 RSMo. By subsequent legislation enacted by the two states and with the consent of Congress, the powers of the Bi-State Development Agency were expanded, so that presently the Agency has, inter alia, the power to acquire, construct, operate, and maintain "bridges, tunnels, airports, wharves, docks, warehouses, grain elevators, passenger transportation facilities and air, water, rail, motor vehicles, and other terminal facilities". Section 70.373 RSMo. The original

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compact gave the Bi-State Agency power to charge and collect fees for use of the facilities owned and operated by it.

You have informed us that your question relates primarily to the passenger transportation facilities which have been acquired by the Bi-State Agency from existing utilities and coordinated into one mass transit system for the entire Bi-State Development District. However, our opinion is not necessarily so limited.

Section 137.100, RSMo, enacted pursuant to the authority of Section 6, Article X, of the Constitution, exempts from taxation all property, real and personal, actually and regularly used exclusively for purposes purely charitable and not held for private or corporate profit, with certain exceptions which are not necessary to consider for purposes of this opinion. In our opinion, the mass transit system of the Bi-State Development Agency, to which you have specifically referred, is exempt from taxation under the provisions of Section 137.100 as property used for purposes purely charitable and not held for private or corporate profit.

There was a time when the concept of charitable purposes comprehended little more than the relief of the destitute or the giving of alms. However, our Supreme Court long ago adopted, and has consistently reaffirmed, a broad definition of charity. In Buchanan v. Kennard, 234 Mo. 117, 136, 136 SW 415, the Court held that the Statute of Charitable Uses (43 Eliz. Ch) is in force in this state (so that "all the objects named therein are considered charitable"), but that the statute is not the sole test of what is a public charity. Hence, "many other uses, not named, and not within the strict letter of the statute, but which, coming within its spirit, equity and analogy, are considered charitable". Among the charitable uses enumerated in the Statute of 43 Elizabeth are those "for the repair of bridges, ports, havens, sea-banks and highways". The authorities consistently hold that if property is used "for the public convenience", such use is charitable within the spirit of the Statute.

In Bader Realty & Investment Company v. St. Louis Housing Authority, 358 Mo. 747, 217 SW2d 489, the Court stated the applicable principle as follows:

"It has been said that charity 'embraces the improvement and happiness of man' and that 'a charitable use, where neither law nor public policy forbids, may be applied to almost anything that tends to promote the well-doing and well-being of social man.' In re Burrough's Estate, 357 Mo. 10, 206 SW2d 340, 344, * * *"

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In the Restatement of the Law Second, Trusts 2d, the following appears:

"Section 368. What Purposes are Charitable

"Charitable purposes include:

"(e) governmental or municipal purposes;

"(f) other purposes the accomplishment of which is beneficial to the community."

In the comment, referring to the Statute of Charitable Uses (43 Eliz. I, C⁴), it is said, "The common element of all charitable purposes is that they are designed to accomplish objects which are beneficial to the community".

Section 373 of the Restatement states:

"A trust for the erection or maintenance of public buildings, bridges, streets, highways, parks or other public works or for other governmental or municipal purposes is charitable."

And Section 374 of the Restatement reads:

"A trust for the promotion of purposes which are of a character sufficiently beneficial to the community to justify permitting property to be devoted forever to their accomplishment is charitable."

In Bogert, Trusts and Trustees, Second Edition, Section 378, page 170, it is said:

"Governments (whether national, state or local) have as their objects the furnishing of facilities and services which will make the lives of their citizens comfortable and safe. They carry benefits of a social nature to large groups. Their work is not confined to distributions for the mere financial enrichment of their inhabitants. Trusts for governmental or municipal purposes are therefore charitable. In the Statute of Charitable Uses these trusts were represented by gifts for the repair of bridges, ports, havens, causeways, sea banks, and highways."

And at page 177, the author states:

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"Types of Governmental Benefits

"Examples of charitable trusts of this class are to be found where the purpose of the trust was to furnish to the inhabitants water, light, or gas, at cost or less, or supply other public utility services which are usually or occasionally furnished by municipalities; * * *"

In 4 Scott on Trusts, Second Edition, Section 373, page 2665, the author states the rule in this manner:

"Governmental or municipal purposes

"A trust for the erection or construction or maintenance of public works is charitable. In the Statute of Charitable Uses are included trusts 'for repair of bridges, ports, havens, causeways, churches, sea-banks and highways'. It has been held that a trust for the purpose of supplying the community with these or other facilities, which are usually supplied at the expense of taxpayers, is charitable. Thus the courts have upheld trusts for the erection of a town hall or similar public building; for the construction or repair of highways; for the erection or maintenance of bridges; for the establishment or maintenance of public parks; for the construction of water works; for protection against fire; and the like. * * *"

The Bi-State Development Agency owns and operates for the benefit and welfare of the inhabitants of the Bi-State Metropolitan Development District the mass transit facilities. This is a public purpose which is for the well-being of the inhabitants of the district and essential to the development thereof. See Todd v. Citizens Gas Co. of Indianapolis, 46 F. 2d 855, 865, holding that the establishment and operation of a gas plant was a proper object of a charitable trust.

The fact that in former times such facilities were operated by private companies and in some areas still are, in no wise affects the public character of the use of the property. Private operation for private profit has proved to be inadequate in this area. Public operation of the system, with only the public interest in view, serves to promote the essential interests of all the inhabitants of the district and to make it a better place in which to live and work, in addition to alleviating traffic congestion.

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Other facilities which may be operated by the Bi-State Agency in its proprietary capacity also serve to further the well-being of the community. For example, it is clear that the acquisition and development of land for an airport is a public purpose essential to the prosperity, the health, welfare and safety of the inhabitants of the area. See Dysart v. City of St. Louis, 321 Mo. 514, 11 SW2d 1045. In our judgment, the property devoted to such uses is "used for purposes purely charitable".

Such property is not held for private or corporate profit. On the contrary, it is held for public purposes. The Agency was not created for the purpose of operating any business for profit. Its primary purpose is to further the development of the district for the good and the welfare of the inhabitants thereof. To the extent that any profit may be derived from the operation of the system, such profit is purely incidental, and particularly so since any such profits must be used in furtherance of the primary object of the Agency. See in this connection Missouri Goodwill Industries v. Gruner, Mo. Sup., 210 SW2d 38.

Moreover, we do not believe that under the Compact the Bi-State Development Agency has any power or authority (and clearly it does not intend) to engage in business for profit or to hold its property for that purpose. On the contrary, its property must be devoted to a public use and may be used for public purposes only. Of decisive importance is the fact that the Agency is a public, and not a private, corporation.

In view of the foregoing, and adopting the modern day concept of "charitable purposes", we hold that the property of the Bi-State Development Agency, real and personal, is used exclusively for purposes purely charitable and for such reason is exempt from taxation. The intent of the Legislature that the property of the Agency be exempt from taxation is evidenced by the enactment of Section 70.375, RSMo.

We add the following caveat. Although its property is used for "purposes purely charitable" within the meaning of Article X, Section 6 of the Constitution, the Bi-State Development Agency is not a true charity or charitable institution within the meaning of the doctrine of charitable immunity. The Agency is a public corporation with power to engage in proprietary functions for the common good. Such functions, although in the public interest and beneficial to the community, are businesses in their fundamental nature, and public bodies (such as municipalities) engaged in such activities have always been liable in tort for negligence to the same extent as private operators of similar enterprises. See Adam Hat Stores v. Kansas City, Mo. Sup., 316 SW2d 594, and Riley v. City of Independence, 258 Mo.

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671, 167 SW 1023, 1025. The immunity of true charities and charitable institutions from tort liability is based on grounds of public policy. No such public policy exists for the purpose of immunizing municipal corporations (which would include the Bi-State Development Agency) from liability for torts in respect of their proprietary functions.

CONCLUSION

The property of the Bi-State Development Agency, used for the well-being, welfare and convenience of the Bi-State Metropolitan Development District, is exempt from taxation.

The foregoing opinion, which I hereby approve, was prepared by my Assistant Joseph Nessenfeld.

Yours very truly,

Thomas F. Eagleton
THOMAS F. EAGLETON
Attorney General

JN:rp