

June 14, 1965



Honorable Ralph E. Smith
Prosecuting Attorney
Bates County
First National Bank Bldg.
Butler, Missouri

Dear Mr. Smith:

This is in answer to your request for an opinion of this office concerning the Countryside Nursing Home which reads as follows:

"The Assessors Office has contacted me with regard to taxability of a newly constructed rest home in the City of Butler. The rest home was constructed at a cost of probably more than One Hundred Thousand Dollars and in the original instance was constructed by the Sunset Vue, Incorporation, a corporation set up by a group of local business men. Shortly after the completion of construction a new corporation was set up, the Countryside Nursing Home, Inc., and this corporation was set up under the general not for profit corporation act of Missouri, a copy of their Articles is enclosed. The new corporation was incorporated by the original parties who set up the Sunset Vue, Corporation. Of course, the not for profit corporation took over the operation of the rest home and as a part of the transfer they are to reimburse the original incorporators and share holders for their investment. Since the new corporation has been established they have sold revenue bonds, drawing six percent interest, to provide the capital necessary to purchase the rest home from the original incorporators and to pay off the

general indebtedness. Also provided in the bonds is a sufficient sum to make some additions and to, perhaps, double the size of the rest home. Mr. H. H. McNabb, a local attorney, assisted in the establishment of these corporations and has furnished a copy of the Articles of Incorporation of the Countryside Nursing Home, Inc., and a copy of his transmittal letter is enclosed.

"I would appreciate an opinion from your office concerning the taxability of this rest home."

In the Articles of Incorporation which you have enclosed, the purposes of the corporation are set out as follows:

"5. The purpose or purposes for which the corporation is organized are: Exclusively charitable, benevolent, eleemosynary, social welfare, health and social, and primarily in furtherance of such purposes, to construct, operate and maintain a retirement home, or nursing home for elderly persons."

The maintenance of a retirement home or nursing home for elderly persons may be done in a purely charitable capacity and thus be exempt from taxation as provided in Article V, Section 6, Constitution of Missouri, 1945, as implemented by Section 137.100, RSMo.

However, the question of whether a particular corporation is tax exempt is not governed merely by the purposes of the corporation but whether it is in fact acting as a charitable institution.

We have enclosed herewith a copy of our opinion to the Honorable C. M. Hulen, Prosecuting Attorney of Randolph County on February 12, 1959, in which we considered the same question relating to the status of the Community Memorial Hospital of Moberly, Missouri. The observations in this opinion should be of aid to you in determining whether the Countryside Nursing Home, Inc. is in fact operating as a charitable institution, and exempt from real and personal property taxes.

We also enclose a letter written on March 5, 1965, to the State Tax Commission of Missouri in which we stated that a private corporation which issued revenue bonds for practically the entire cost of construction of its facilities and was to pay off such revenue bonds from its income was not exempt from property tax even

Honorable Ralph E. Smith

-3-

though the corporation was organized as a not-for-profit corporation for a charitable purpose. The similarity between the facts set out in this letter and those you have set forth indicate that the Countryside Nursing Home, Inc. might not be tax exempt.

However, the question of whether a particular association is exempt from property tax must be decided in each case on all of the facts and we are not in position to make a definite decision on the matter.

Very truly yours,

NORMAN H. ANDERSON
Attorney General

Encl (12)