CHARITIES:
CORPORATIONS:
NOT FOR PROFIT CORPORATIONS:
NURSING HOMES:
PROPERTY TAX:
PROPERTY TAX EXEMPTION:
TAXATION-EXEMPTION:

The property of a private non-profit corporation organized to provide low rent housing for the aged is not exempt from real and personal property taxes under Section 137.100, RSMo, if the rentals exceed the operating and maintenance costs of the corporation.

OPINION NO. 172

March 17, 1966

FILED
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Honorable Floyd E. Lawson
Prosecuting Attorney
Monroe County
Paris, Missouri

Dear Mr. Lawson:

This is in answer to your request for an opinion of this office as to whether the property of Madison Community Housing, Inc., is exempt from taxation as property held for charitable purposes. The structure and purpose of the corporation is set out in your letter as follows:

> "* * * The development is to be built and operated by Madison Community Housing, Inc., which is incorporated under the General Not for Profit Corporation Act of Missouri. * * *
>
> "The corporation presently plans to construct twelve housing units in Madison, Missouri. The construction will be financed by FHA funds, with the corporation giving a deed of trust securing the loan.
>
> "The purpose of the construction is to provide low cost rental housing for senior citizens in the low income ranges. * * * The rental from the project will be used to amortize the loan and to pay operational expenses. No part of the income may accrue to the benefit of any private individual. Applicants for the rental housing must be at least sixty-two years of age and must have an income not in excess of the

> maximum income which will be set by the county FHA committee.
>
> "The project is aimed at those persons on the old age pension rolls and recipients of Social Security who are financially unable to provide adequate housing for themselves, however, individuals with private sources of income will not be excluded so long as they fall below the maximum income level.
>
> "After the mortgage indebtedness has been retired, title to the property will be conveyed, as a gift, to the City of Madison, Missouri."

It appears that at its inception, most, if not all of the assets of the corporation, will be the money which it proposes to borrow. This will be used as capital for housing construction. The primary source of revenue will be the rent paid for the use of these houses. In order to repay the interest and principal on its indebtedness, the corporation must charge as rentals an amount over and above the operating costs of the corporation. Thus it appears that at the inception of the corporation, it will have little or no equity in the assets. As principal payments are made on the loan out of funds received for purveying its service, the equity of the corporation in its assets will constantly increase.

Article X, Section 6 of the Constitution of Missouri exempts from taxation all property of the state, county and other political subdivisions. Obviously, this corporation is not a political subdivision. It is simply a private corporation. The mere fact that after a mortgage indebtedness has been retired it is contemplated that title to the property will be conveyed as a gift to the city of Madison, has no bearing upon the situation. The question is whether the property is presently exempt prior to the time title thereto may vest in the city. Until such eventual vesting in the city of Madison, the property is owned and operated by a private corporation and is not therefore automatically exempt from taxation.

Section 6, Article X of the Constitution, further authorizes the Legislature to enact general laws exempting from taxation "all property, real and personal, not held for private

or corporate profit and using exclusively . . . for property purely charitable.* * *." (Emphasis ours) Section 137.100, RSMo, implements the quoted portion of the Constitution.

It is our opinion under the facts submitted that the property of Madison Community Housing, Inc., is and will be held for private or corporate profit within the meaning of Section 6, Article X and Section 137.100, RSMo, and for that reason such property is not exempt from taxation. Under the facts submitted, the corporation is to be so operated that the charges will not only take care of all operating and maintenance costs, but will be in an amount sufficient to reduce the corporate indebtedness and to enable the corporation to acquire valuable assets debt free. In City of Newport News v. Warwick County, 159 Va. 571, 166 SE 570, l.c. 578-579, the court said:

> "It also appears manifest that reduction of the indebtedness against the property by payment of the principal of the bonds outstanding out of the earnings can only be regarded as profit."

In Williams v. Town of Morristown, 32 Tenn. App. 274, 222 SW2d 607, l.c. 612, it was said:

> "So, the operation of a water works system by a municipality for 'profit' means the system is being conducted on a commercial basis for revenue and not as a governmental enterprise out of public funds for the common good."

There are many definitions of the term "profit", too numerous to set forth in this opinion, some of which may be found in Volume 34, Words and Phrases, Permanent Edition. However, under any applicable definition, there can be no question but that an operation such as is here proposed, wherein the revenue to be received will be far in excess of the costs of operation and maintenance, necessarily results in profit. That the profit is being used to acquire and pay for a housing development which is being used to house the aged is of no consequence and does not alter either the essential profit-making nature of the operation or the fact that the operation is conducted on a commercial basis for revenue.

That the incorporators and members of Madison Community Housing, Inc., are prohibited by its Articles of Incorporation from receiving any part of the income or property of the corporation by way of dividend or otherwise (except as compensation for services rendered) does not mean that the property is not held for corporate profit. The Constitution and statute do not require that the profit be received by the members of the corporation. It is sufficient only that the corporation hold the property for profit in order to exclude such property from the benefit of the tax exemption. In our opinion, the corporation's purpose is to derive a profit from the property. It follows that if the corporation is operated as set forth in the documents submitted by you, its property will be held for corporate profit.

We have not overlooked the fact that Madison Community Housing, Inc., was organized as a not-for-profit corporation under Chapter 355. In determining whether the property of the corporation is exempt from taxation, neither the Articles of Incorporation, the charter issued to such corporation, nor the statute under which it obtained its charter governs the ultimate decision. See Celina and Mercer County Telephone Co. v. Union-Center Mutual Telephone Association, 102 Ohio 487, 133 N.E. 540. The true test is not its charter, but the character of its business, its method of conducting such business and the actual purpose for which the property is held and used.

The case cited in your letter, Bader Realty & Investment Co. v. St. Louis Housing Authority, Mo. Banc, 217 SW2d 489, is not applicable as the housing corporation was a public rather than a private corporation.

## CONCLUSION

The property of a private non-profit corporation organized to provide low rent housing for the aged is not exempt from real and personal property taxes under Section 137.100, RSMo, if the rentals exceed the operating and maintenance costs of the corporation.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. John H. Denman.

Yours very truly,

NORMAN H. ANDERSON
Attorney General