

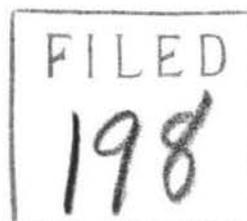
CHARITIES:
NURSING HOMES:
STATUTORY CONSTRUCTION:
TAXATION: EXEMPTIONS
 SALES-USE TAX

The Articles of Incorporation and by-laws of Kabul Nursing Homes, Inc., would permit its being considered a charitable institution and hence exempt from imposition of sales taxes under Section 144.040, RSMo, if, as matter of fact, the operation of the home is such as to entitle it to be a charitable institution.

October 11, 1966

OPINION NO. 198

Honorable Earl L. Sponsler
State Representative
Texas County
Rural Route 2
Cabool, Missouri



Dear Representative Sponsler:

This is in answer to your request for an opinion of this office as to whether Kabul Nursing Homes, Inc., of Cabool, Missouri, is liable for Missouri sales and use tax.

It is our understanding from the letter and Articles of Incorporation enclosed in your request, that Kabul Nursing Homes, Inc., was incorporated as a not-for-profit corporation to operate a nursing home in Cabool, Missouri.

Your letter also describes the purposes of the corporation as follows:

"As you can see by the By-laws, the stated purpose of the Corporation is to operate a nursing and convalescent home in Cabool on a 'Non-Profit Plan To Care for the Aged, Infirm, Afflicted and Convalescent Regardless of Race, Color, Sex, Creed or Religious Affiliation.' More than \$30,000.00 of the cost of construction and furnishing of the Nursing Home is being provided by donations by businesses and individuals in this area. The Nursing Home will be a member of the Cabool United Fund in its next annual drive, and will receive a portion of the funds solicited in that drive. In addition, various organizations and Church groups will contribute to the operation of the Nursing Home for indigent patients.

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"The Nursing Home will be operated on a strictly Not-for-Profit basis, and patients will be admitted who are able to pay, as well as those who are **unable** to pay, and the charges for services rendered will be based upon the operational expense and repayment of the bonded indebtedness incurred in the construction of the Home. Of course, when this bonded indebtedness is retired, the rates charged will be substantially decreased, as it is the intention of the Corporation that no profit will be made * * *."

The exemption from sales and use taxes of charitable institutions which are in fact charitable is authorized by Section 144.040, RSMo, as follows:

"In addition to the exemptions under section 144.030 there shall also be exempted from the provisions of sections 144.010 to 144.510 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."

The reason for granting state tax exemptions is in return for the performance of functions which benefit the public and the exemption in favor of charitable institutions is based upon the ground that a benefit is conferred upon the public by them with consequent relief, to some extent, of the burden imposed upon the state to care for and advance the interests of its citizens. Bethesda General Hospital v. State Tax Commission, Mo. Sup., 396 S.W.2d 631 (1965); 84 C.J.S. Taxation, Section 281, p. 533; 51 Am. Jur. Taxation, Section 600, p. 583; 34 A.L.R. 635.

The maintenance of a retirement or nursing home for elderly people who have only a limited income constitutes the relief of those who otherwise might be unable to care for themselves and thus lessen the burden of care which might otherwise be imposed upon the state. If operated in purely a charitable capacity such an institution may be exempt from payment of sales or use taxes under Section 144.040.

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The fact that the home may not be supported by public funds or by religious organizations does not per se prevent it from being granted an exemption as a charitable institution under this section. This was our holding in Opinion numbered 173, sent to the Honorable Thomas A. David, Director of Revenue, on October 11, 1966, a copy of which we enclose herewith.

However, the charitable exemption depends not only upon the purpose of the corporation but its method of operating; whether it is in fact acting as a charitable institution. *Bethesda General Hospital v. State Tax Commission*, supra; *Young Men's Christian Association v. Sestric*, Mo. Banc., 242 S.W.2d 497 (1951); *Salvation Army v. Hoehn*, Mo. Banc., 188 S.W.2d 826 (1945). Moreover, each tax exemption case is "peculiarly one which must be decided upon its own facts". *Bethesda General Hospital v. State Tax Commission*, supra; *Midwest Bible and Missionary Institute v. Sestric*, 364 Mo. 167, 260 S.W.2d 25 (1953).

You state that patients will be admitted to Kabul Nursing Homes, Inc., who are able to pay, as well as those who are unable to pay and the charges for services rendered will be based upon the operational expense and repayment of the bonded indebtedness incurred in the construction of the Home.

The question of the tax exempt status of an organization which as part of its activities rents housing facilities to low income families has several times been considered by the Supreme Court of Missouri. See *Young Men's Christian Association of St. Louis v. Sestric*, supra; *Bader Realty & Investment Company v. St. Louis Housing Authority*, Mo. Banc., 217 S.W.2d 489 (1949); *Salvation Army v. Hoehn*, Mo. Sup., 188 S.W.2d 826 (1945). See also *Missouri Goodwill Industries v. Owner*, 357 Mo. 647, 210 S.W.2d 38 (1948) and *Northeast Osteopathic Hospital v. Keitel*, Mo. Sup., 197 S.W.2d 970 (1946).

Although the question raised in these cases concerns the charitable status of several organizations in relation to their exemption from payment of property taxes under Section 137.100, RSMo, the discussions of what constitutes a charitable institution is applicable to the question before us.

In the more recent cases, the Missouri Supreme Court has found that the tax exempt status of an organization which acts in a general charitable capacity is not lost even though the organization, in promoting its charitable purpose, leased or rented rooms to the public for money.

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The applicability of these cases may be questioned inasmuch as in each of them it was strongly emphasized in the Court's opinion that the operating expenses of the organization in question exceeded the income and the organization was dependent upon the receipt of additional grants, usually from the public to continue operations.

As an example of this emphasis, in *Bethesda General Hospital v. State Tax Commission*, supra, the court at page 633, in describing the function of the hospital, stated that it was a member of United Fund and did a tremendous amount of charity work for patients who cannot pay for care and treatment, and it has continually experienced a net loss in operating income by reason of its charitable work even after the application of endowment income.

The Court then, quoting from *Bader Realty & Investment Company v. St. Louis Housing Authority*, supra, defined a charitable operation in the following terms, l.c. 633:

"* * * As now viewed, it comprehends activities not self supporting 'which are intended to improve the physical, mental and moral condition of the recipient and make it less likely that they will become burdens on society and more likely that they will become useful citizens.'
(Emphasis added)

The proposed operation of the nursing home is not only self-supporting, but if the bonds are to be paid, its operations must produce sufficient income in excess of operating expenses to pay the interest and eventually the principal on such bonds.

In *Young Men's Christian Association v. Sestric*, supra, it was shown that for each of the three taxable years in question, the operation of its resident halls in its three branches showed an excess of income over operating expenses of \$55,214.60. (The overall operations of the organization showed a deficit of \$640,271.01 during that period, some of which was made up by allocation of community funds).

In answer to the contention that because of the profits received from the operation of the residence halls the Y.M.C.A. property was not being used "exclusively" for charitable purposes, the Court said that to determine whether an organization is operating in a charitable capacity, "the controlling consideration cannot be solely whether a profit or a loss was in fact realized or sustained."

After analyzing the fundamental purpose of the Y.M.C.A., which it found to be charitable and comparing the charitable activities of the organization with those in similar cases, the Court discussed the question of the profit making aspects of the resident halls, as follows, l.c. 505:

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"The YWCA, Salvation Army, and Goodwill cases granted tax exemptions because the uses made of the properties were intimately connected with the accomplishment of the purely charitable purposes of the organizations and because the uses themselves did not have for their purposes the making of profit. A distinction should be clearly made between such situations and one in which there is use of property, the purpose of which use is to make profit, even though the profit is made for the express purpose of being used, and is used, to further and accomplish a purely charitable purpose. And this is true even though the use of the property may be said to be reasonably connected with the purely charitable purposes of the corporation."

It is well known that most elderly people have some income from various state and federal programs of public assistance. It is not unreasonable that a home designed to provide shelter and medical assistance to such persons charge for these services at a rate commensurate with the patient's ability to pay. Such charges could be made in furtherance with the general charitable purpose of the home. For the reasons given in the cases previously cited, especially *Young Men's Christian Association v. Sestric*, supra, we believe that fact that Kabul Nursing Homes, Inc., intends to charge many of its patients does not in itself forfeit its right to a charitable exemption under Section 144.040.

However, to sustain its tax-exempt status as a charitable institution under this section, the Home must operate along those principles set out in the above cases, and its managers must remain cognizant of the fact that the purpose of the Home is to aid the elderly rather than to take in sufficient funds to pay the bonds.

As a guide to those factors which determine whether an institution is acting in a charitable capacity, we enclose herewith Opinion No. 43, issued February 12, 1959, to the Honorable C. M. Hulen, Jr., Prosecuting Attorney of Randolph County, in which we discussed the status of the Community Memorial Hospital at Moberly regarding liability for property taxes. In this opinion discussing the "factual" determinations to be considered we stated:

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"The appellate courts of this state have held that the fact that a hospital derives part of its revenue from paying patients does not exclude it from the benefits of the constitutional exemption from taxation, (See State ex rel. v. Powers, 10 Mo. App. 263, affirmed 74 Mo. 476), if the hospital were equally available to those who could not pay and if the income were used in furtherance of the charitable purposes. Northeast Osteopathic Hospital v. Keitel, 197 S.W.2d 970, 975.

"We wish to call attention to the fact that cases in other jurisdictions have held that a hospital loses its character as a charitable institution if it receives pay patients to such an extent as would exhaust its accommodations and prevent its receiving and extending hospital service to the usual and ordinary number of indigent patients applying for admission. 10 Am. Jur., Charities, Section 135, pp. 685 and 686. This rule would seem to be in accord with the views expressed in the Northeast Osteopathic Hospital case, l.c. 975, supra, to the effect that pay patients are admitted for treatment would not make the hospital less charitable if the hospital were 'equally' available to those who could not pay.

"It has also been held in this state that the exemption from taxation depends not alone upon the purposes for which the organization is organized but is also dependent upon the actual use of the property. See Salvation Army v. Hoehn, 188 S.W.2d 826, 828. * * *"

In our opinion these same considerations apply equally to Kabul Nursing Homes, Inc., and whether or not Kabul Nursing Homes, Inc., will in actual operation be a charitable institution presents a factual question upon which we cannot express a legal opinion.

CONCLUSION

It is the opinion of this office that the Articles of Incorporation and by-laws of Kabul Nursing Homes, Inc., would permit its being considered a charitable institution and hence exempt from

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imposition of sales taxes under Section 144.040, RSMo, if, as matter of fact, the operation of the home is such as to entitle it to be a charitable institution.

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

Very truly yours,



NORMAN H. ANDERSON
Attorney General

Enclosures (opinions):

No. 173, to David, 10/11/66
No. 43, to Hulen, 2/12/59