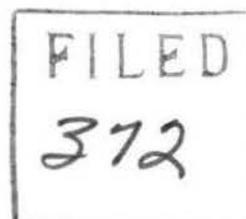


Answer by Letter (Gardner)

July 27, 1970

OPINION LETTER NO. 372

Honorable D. R. "Ozzie" Osbourn
State Representative
Ninety-ninth District
Box 224
Monroe City, Missouri 63456



Dear Representative Osbourn:

This is in response to your request for an official opinion on the question whether the property of Paris Senior Citizens Housing is exempt from taxation.

From the information submitted with your opinion request, it appears that the property in question consists of a 20 unit apartment house in Paris, Missouri. The apartments are rented to older people who have limited income. You also submitted a copy of the Amended Articles of Incorporation. The structure and purpose of the corporation are set forth in paragraph 5 of the Amended Articles of Incorporation as follows:

"This corporation is organized not-for-profit and the objects and purposes to be transacted and carried on are to promote the general social welfare of the community and for that purpose:

"to acquire, construct, provide, and operate rental housing and related facilities suited to the special needs and living requirements of elderly rural residents of low or moderate income or other rural residents of low income, without regard to race, color, creed, or national origin;

"to acquire, improve, and operate any

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real or personal property or interest
or rights therein or appurtenant thereto;

"to sell, convey, assign, mortgage, or
lease any real and personal property;

"to borrow money and to execute such
evidence of indebtedness and such con-
tracts, agreements, and instruments as
may be necessary, and to execute and
deliver any mortgage, deed of trust,
assignment of income, or other security
instrument in connection therewith; and

"to do all things necessary and appro-
priate for carrying out and exercising
the foregoing purposes and powers."

It appears from the foregoing that the corporation was organized primarily for the purpose of acquiring and operating the apartment house. The corporation is empowered to borrow money to acquire property and execute a mortgage or deed of trust to secure the indebtedness. Moreover, the corporation is authorized to set its charges at an amount which will not only pay the cost of maintenance and operation and interest on the borrowed money, but additional amounts to take care of principal payments and other items.

Paragraph 7 of the Amended Articles of Incorporation provides that:

". . .The balance, if any, of all money received by the corporation from its operations, after the payment in full of all operating expenses, debts and obligations of the corporation of whatsoever kind and nature as they become due, shall be used to make advance payments on any loans owed by the corporation, . . ."

Thus, it appears that as principal payments are made on indebtedness secured by mortgage or deed of trust, the equity of the corporation will constantly increase.

Article X, Section 6 of the Constitution authorizes the legislature to enact general laws exempting from taxation "all property, real and personal, not held for private or corporate profit and used exclusively . . .for purposes purely charitable. . . ." Section 137.100 RSMo implements the quoted portion of the Constitution.

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The basic question therefore is whether the 20 unit apartment owned by the corporation is held for private or corporate profit. It is apparent that if the corporation exercises the powers set forth in the Amended Articles of Incorporation, the corporation will be so operated that charges will not only take care of all operating and maintenance costs, but will be in an amount sufficient to reduce the corporation's indebtedness and to enable the corporation to acquire valuable assets debt free. In such circumstances the rentals would exceed the operating and maintenance costs of the corporation.

The situation then is one in which there is use of the property to make a profit, even though the profit is made for the express purpose of being used to further and accomplish a purely charitable purpose. This was the situation in Defenders' Townhouse, Inc. v. Kansas City, 441 S.W.2d 365 where the court held that a not for profit corporation's property that was used for housing for persons 62 years of age or older was not operated for purposes purely charitable and was not exempt from taxation by the city, when the payments by the residents of the property were used to pay off a loan of the corporation.

This office has held that 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. A copy of Opinion No. 172 issued on March 17, 1966 to the Honorable Floyd E. Lawson, Prosecuting Attorney, Monroe County, Paris, Missouri is enclosed.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosure:

Op. No. 172
3-17-66, Lawson