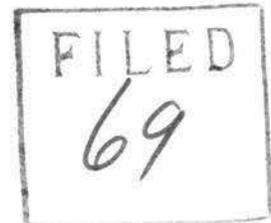


May 18, 1972

OPINION LETTER NO. 69
Answer by letter-Almstedt

Honorable E. Richard Webber
Prosecuting Attorney
Scotland County
110 West Monroe Street
Memphis, Missouri 63555



Dear Mr. Webber:

This letter is in response to your opinion request on the following submitted question:

"Shall the Probate Court assess inheritance tax on not-for-profit cemetery associations, wherein the cemetery association is given a bequest in a will?"

The Missouri legislature has required by Section 145.020, RSMo 1969, that a tax be ". . . imposed upon the transfer of any property, . . . to persons, institutions, associations or corporations, . . ." unless such transfer falls without the prescriptions of that section or is exempt from taxation. The laws of Missouri exempt from inheritance tax such transfers which are ". . . used solely for . . . charitable . . . purposes in this state." (Section 145.090(1), RSMo 1969) or "[w]hen any property, benefit or income shall pass to or for the use of any . . . charitable purpose in this state, or to any . . . association, . . . in this state to be held and used . . . exclusively for . . . charitable uses and purposes, . . ." (Section 145.100(1), RSMo 1969).

The Missouri Supreme Court in the case of Catron v. Scarritt Collegiate Institute, 175 S.W. 571, 573 (Mo. banc 1915) quoted with approval from 5 Ruling Case Law 291 where a charity was defined as follows:

"Probably the most comprehensive and carefully drawn definition of a charity that has

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ever been formulated is that it is a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. . . ."

The above work referred to in Catron further elaborated on the "public charity" definition by stating that,

"[a] gift is a 'public' charity when there is a benefit to be conferred upon the public at large, or some portion thereof, or upon an indefinite class of persons. . . ." 5 Ruling Case Law at 293

The Missouri courts have, to date, consistently followed the definition of public charity as above set forth.

In Newton v. Newton Burial Park, 34 S.W.2d 118 (Mo. 1930), the court found that a bequest for the purpose of "beautifying, ornamenting and maintaining the cemetery" fell within the definition of "charitable trust" or "public charity" (Newton, supra at 121). In Garlock v. Ladies Cemetery Association, 317 S.W.2d 432 (Mo. 1958), the court determined that the defendant association was organized under the Illinois not-for-profit association laws and had authority to do business in Missouri. One of the contentions raised on appeal was that while the defendant association was a not-for-profit organization, it was not a public charity. The court determined that the association was amenable to Illinois law and under the latter law ". . . all income received is [to be] devoted to the discharge of [the cemeteries] . . . public functions. . . ." and that the defendant association was therefore a public charity (Garlock, supra at 436-437).

Is a not-for-profit cemetery association a charitable entity within the above definition, thereby concluding that testamentary bequests to such entities are deemed to be either for charitable purposes or to a charitable institution and within the exemptions from inheritance tax transfer of Sections 145.090 and 145.100, RSMo 1969? This opinion answers the question affirmatively. However, in answering your request, I proceeded from the assumption that the cemetery association receiving the bequest engages in that activity only and engages in no other activities of an income producing nature.

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For your information, in Opinion No. 57, 1955, this office ruled that property or money transferred to a trustee for the purpose of beautification and care of the graves of the testator and his wife is subject to the Missouri inheritance tax. The conclusion in that opinion was compelled by the fact that the bequest was for the benefit of an individual. In this case, as we understand the facts, the cemetery association receives the bequest without any direction to use the bequest for any individual's benefit.

It is the opinion of this office that a cemetery association duly qualified as such under Chapters 352 or 355, RSMo 1969, and operating exclusively as such an entity, exists for a charitable purpose. Therefore, any testamentary transfer to it is exempt from the assessment of inheritance tax pursuant to Sections 145.090 and 145.100, RSMo 1969.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 57
1-6-55, May