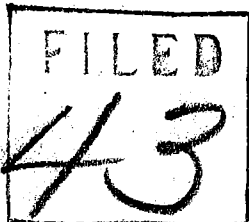


TAXATION:
EXEMPTION FROM TAXATION:
CHARITIES:

The charter and bylaws of the Community Memorial Hospital would not appear to prevent its being a charitable institution and entitled to tax exemption if, as a matter of fact, the operation of such hospital is such as to entitle it to be considered a charitable institution.

P. H.
a. c.



February 12, 1959

Honorable C. M. Hulen, Jr.
Prosecuting Attorney
Randolph County
Moberly, Missouri

Dear Mr. Hulen:

Reference is made to your request for an official opinion, which request reads as follows:

"The Assessor of Randolph County has asked me to request an opinion from your office concerning whether or not the Community Memorial Hospital of Moberly, Missouri, is exempt from taxation.

"Enclosed, herewith, find photostatic copies of: Articles of Incorporation under the General Not for Profit Corporation Act, Certificate of Incorporation of Community Memorial Hospital, and By-Laws of Community Memorial Hospital."

Article X, Section 6 of the Missouri Constitution, enumerates what property shall be exempt from taxation as follows:

"All property, real and personal, of the state, counties and other political subdivisions, and non-profit cemeteries, shall be exempt from taxation; and all property, real and personal, not held for private or corporate profit and used exclusively for religious worship, for schools and colleges, for purposes purely charitable, or for agricultural and horticultural societies may be exempted from taxation by general law. All laws exempting from taxation property other than the property enumerated in this article, shall be void."

Honorable C. M. Hulien, Jr.

Section 137.100, subsection 6, V.A.M.S., provides for tax exempt property as follows:

"(6) All property, real and personal actually and regularly used exclusively for religious worship, for schools and colleges, or for purposes purely charitable, and not held for private or corporate profit shall be exempted from taxation for state, city, county, school and local purposes; provided, however, that the exemption herein granted shall not include real property not actually used or occupied for the purpose of the organization but held or used as investment even though the income or rentals received therefrom be used wholly for religious, educational or charitable purposes."

It appears from the documents submitted with your request that the Community Memorial Hospital (osteopathic) was incorporated in 1957 under the General Not For Profit Corporation Law, Chapter 355, V.A.M.S. A "not for profit corporation" is defined in Section 355.015, thusly:

"(3) 'Not for profit corporation' means a corporation no part of the income or property of which is distributable to its members, directors or officers; provided, however, that the payment of reasonable compensation for services rendered and the making of distributions not representing pecuniary profits or gains upon dissolution or final liquidation, as permitted by this chapter, shall not be deemed a distribution of income or property."

The purposes for which the corporation was organized, as stated in the articles of incorporation, are as follows:

"5. The purpose or purposes for which the corporation is organized are: To establish and maintain a hospital for the care of persons suffering from illnesses or disabilities which require that the patients receive hospital care; to carry on any educational activities related to rendering care to the sick and injured or the promotion of health, which in the opinion of the Board of Trustees may be justified by the facilities, personnel, funds or other requirements that are or can be made available, to promote and

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carry on scientific research relating to the care of the sick and injured insofar as, in the opinion of the Board of Trustees, such research can be carried on in, or in connection with the hospital; to participate, so far as circumstances may warrant, in any activity designed and carried on to promote the general health of the community; to receive gifts, bequests, devises and other conveyances of personal and real property and to accept same with or without limitations or as endowments or as memorials or in trust for the benefit of or for any purpose or purposes for which the corporation is organized; to maintain an out-patient clinic and to foster, encourage and promote study, investigation and research in the art of diagnosis, healing and relieving human suffering and to foster and spread knowledge of medicine and treatment in relieving human suffering and disease; to procure the attendance of competent physicians and surgeons, (both D.O. and M.D.), nurses and attendants including laboratory technicians, scientists and other persons necessary, usual or beneficial in carrying out the purposes of the corporation and to maintain free beds for such disabled and indigent persons and to furnish proper attendance for their care as may be admitted to the hospital, subject to such special rules and regulations as the Board of Trustees may establish from time to time for their admission, care and treatment. The hospital shall be conducted independent of sectarianism, and shall be open to any sect or creed. No charge for board, room, general nursing, medicines, medical care and attention shall be made of those patients who are unable to pay."

The general rule as to whether a hospital is a charitable institution is stated in 10 Am.Jur., Charities, Section 135, p. 685, thus:

"A corporation, the object of which is to provide a general hospital for sick persons, having no capital stock nor provision for making dividends or profits, deriving its funds mainly from public and private charity and holding them in trust for the object of sustaining the hospital,

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and conducting its affairs for the purpose of administering to the comfort of the sick, without expectation or right on the part of those immediately interested in the corporation to receive compensation for their own benefit, is a public charitable institution. Moreover, the facts that a corporation, established for the maintenance of a public hospital, by its rules requires of its patients payment for their board according to their circumstances and the accommodation they receive, that no person has individually a right to demand admission, and that the trustees of the hospital determine who are to be received do not render it the less a public charity. * * *

In 14 C.J.S., Charities, Section 2, subsection (3), p. 422, it is stated that the test in determining whether a hospital is a corporation organized for the purpose of founding and maintaining a hospital as charitable or otherwise is whether or not it is maintained for gain, profit or advantage. See also Northeast Osteopathic Hospital v. Keitel, 197 S.W.2d 970, 975, wherein the above noted test is recognized.

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

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the property. See *Salvation Army v. Hoehn*, 188 S.W.2d 826, 828. Whether or not the Community Memorial Hospital is in actual operation a charitable institution presents a factual question upon which we cannot express a legal opinion.

CONCLUSION

Therefore, in the premises, it is the opinion of this office that the charter and bylaws of the Community Memorial Hospital would not appear to prevent its being a charitable institution and entitled to tax exemption if, as a matter of fact, the operation of such hospital is such as to entitle it to be considered a charitable institution.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donal D. Guffey.

Very truly yours,

John M. Dalton
Attorney General

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