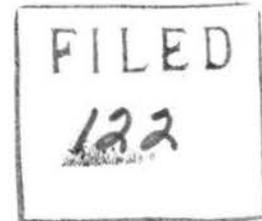


March 14, 1973

OPINION LETTER NO. 122  
Answer by Letter - Card

Honorable Albert Spradling  
Missouri Senate, District 27  
Room 423 State Capitol Building  
Jefferson City, Missouri 65101



Dear Senator Spradling:

This letter is issued in response to your request for a ruling on the following question:

"If a charitable hospital organized under the Not-For-Profit Corporation Law of the State of Missouri owns a tract of real estate upon which its hospital is located and which has been declared tax exempt, as being used exclusively for charitable purposes, constructs a clinic building on a portion of its tax exempt property, which clinic building is leased to a group of private physicians who are members of the hospital staff, is that clinic building and the real estate upon which it is located taxable?"

You provide the following facts. Community Memorial Hospital, Moberly, Missouri, is a not-for-profit corporation. In Community Memorial Hospital v. City of Moberly, 422 S.W.2d 290 (Mo. 1967), the Missouri Supreme Court declared that its property is tax exempt pursuant to Section 137.100, RSMo, as being used exclusively for charitable purposes. Since then, the Board of Directors authorized the construction of a clinic building on the northwest portion of the hospital grounds for lease to four private physicians. The building has been occupied since August of 1972. The lease provides that the rent for each office

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shall be \$150 per month for the first year. Thereafter, the rent shall be calculated by a formula to amortize construction costs and include the interest and insurance. At no time is there a charge for the use of the ground upon which the building is located and the adjacent parking lot.

In addition, you state that in exchange for the beneficial lease to the physicians, the hospital has received more business from having recruited four young physicians. Having their offices on the hospital grounds has provided more efficient and continuous emergency care room. Also, the physicians contribute without charge to the hospital and the training programs for the nurses.

We assume from your statement of facts and from the terms of the lease that the clinic-office building is used exclusively by the four physicians as their offices for private practice.

Constitutional exemption from taxation of certain property is granted by Article X, Section 6, of the Missouri Constitution:

"All property, real and personal, of the state, counties and other political subdivisions, and nonprofit 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." (Emphasis added)

Implementing the constitutional provisions for religious, educational and charitable institutions is Section 137.100, RSMo 1969, which provides:

"The following subjects are exempt from taxation for state, county or local purposes:

\* \* \*

"(5) 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, except that

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the exemption herein granted does 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 is used wholly for religious, educational or charitable purposes." (Emphasis added)

There are certain well established rules which must guide any determination of whether certain property is exempt from taxation. Generally, all property is liable to taxation unless specifically exempted. Taxation is the rule, exemption is the exception; and claims for exemption are not favored in the law. Bethesda General Hospital v. State Tax Commission, 396 S.W.2d 631 (Mo. 1965); Midwest Bible and Missionary Institute v. Sestric, 260 S.W.2d 25 (Mo. 1953). Exemption statutes must be strictly construed against the taxpayer and the burden is on the party claiming the exemption to establish clearly his right thereto. In re First National Safe Deposit Co., 173 S.W.2d 403 (Mo. banc 1943); State ex rel. St. Louis Y.M.C.A. v. Gehner, 11 S.W.2d 30 (Mo. banc 1928). However such statutes also should be reasonably construed so as not to curtail the intended scope of the exemption. Frisco Employes' Hospital Association v. State Tax Commission, 381 S.W.2d 772 (Mo. 1964); St. Louis Gospel Center v. Prose, 280 S.W.2d 827 (Mo. 1955).

Each tax exemption case is peculiarly one which must be decided upon its own facts. Furthermore, "dominant use" or "principal use" cannot be substituted for the words "used exclusively". Community Memorial Hospital v. City of Moberly, *supra*.

The Supreme Court of Missouri, in a number of cases, has held that the property must be used exclusively for the purposes for which it is exempt from taxation; that where the occupation and use primarily commercial in character are carried on for revenue even though the revenue be used for such charitable purposes, the property is not exempt from taxation.

In Evangelical Lutheran Synod of Missouri, Ohio, and Other States v. Hoehn, 355 Mo. 257, 196 S.W.2d 134 (1946), the court denied tax exempt status to a publishing corporation organized as a subsidiary of the Lutheran Church since it did an extensive business in competition with commercial printing houses. In contrast, the court in Young Women's Christian Association v. Baumann, 344 Mo. 898, 130 S.W.2d 499 (banc 1939); Missouri Goodwill Industries v. Gruner, 357 Mo. 647, 210 S.W.2d 38 (1948), granted tax exemption since the use of the property was purely charitable. Recently, the court granted tax exemption in Bethesda General Hospital v. State Tax Commission, *supra*, holding

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that the residence halls for full time employees on the grounds built by the hospital was necessary for the efficient operation of the hospital.

Although we have found no Missouri cases exactly on point, we note that the courts in Ohio and Vermont which have considered the issue have held that the building used by physicians as their offices are commercial in nature and thus not tax exempt. See Gifford Memorial Hospital v. Town of Randolph, 118 A.2d 480 (Vt. 1955); White Cross Hospital Association v. Warren, 215 N.E.2d 374 (Ohio 1966).

Upon a review of the particular facts of this case and guided by the principles as enunciated by the Missouri Supreme Court, it is the conclusion of this office that the clinic-office building and the land upon which it is built are not exempt from real estate taxes since the property is not used exclusively for charitable purposes. Although the hospital has obtained secondary benefits of having physicians close to the hospital and thereby having a more efficient emergency room care, the building is leased to four physicians for their office space who are engaged in the private practice of medicine for a profit. The use of this building has acquired a commercial character similar to that in Evangelical Lutheran Synod, *supra*; and White Cross Hospital Association v. Warren, *supra*. The physicians are clearly competing against other physicians who must lease their office space on which property taxes must be paid from private investors. Thus, the occupant physician will be able to net a higher profit due to the decreased rental costs of the office space.

Although the aims of the Community Memorial Hospital are laudable, it is clear that the property used by the physicians for private practice is not used exclusively for a purely charitable purpose.

Very truly yours,

JOHN C. DANFORTH  
Attorney General