



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD
62706

September 24, 1975

FILE NO. S-971

TAXATION:
Exemption for Nursing Home

Honorable Martin Rudman
State's Attorney
Will County
Courthouse
Joliet, Illinois 60431

Dear Mr. Rudman:

This is to respond to your letter wherein you request my opinion as to the following question:

Under applicable constitutional provisions and statutes, will the property owned by Lutheran Welfare Services of Illinois on which Salem Village Phase III will be constructed be exempt from taxation?

You have described Salem Village Phase III as a new addition to the Salem Village. Salem Village is a licensed nursing home complex offering care to aged persons. The Village

Honorable Martin Rudman - 2.

is operated by the Lutheran Welfare Services of Illinois, a not-for-profit organization which is the charitable and social welfare arm of both the Illinois Synod of the Lutheran Church in America and the Illinois District of the American Lutheran Church. Phase III will enable Salem Village to offer its services to a greater number of elderly citizens. These services encompass housing, meals, laundry and medical care. Salem Village charges a fee for the services it provides to its residents.

The General Assembly's authority to exempt charitable institutions from property tax is derived from section 6 of article IX of the Illinois Constitution of 1970 which provides in pertinent part:

"The General Assembly by law may exempt from taxation only the property of the State, units of local governments and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.
* * *

The legislature has exercised its constitutional authority by enacting section 19.7 of the Revenue Act of

Honorable Martin Rudman - 3.

1939. (Ill. Rev. Stat. 1973, ch. 120, par. 500.7.) That section reads as follows:

"§ 19.7. All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States, and all property of old people's homes, when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit; and all free public libraries. The words 'old peoples homes' as used in this section shall include any old peoples home licensed by the State of Illinois and owned by a not-for-profit corporation or organization and operated not for profit under the auspices of a religious, fraternal, charitable or other non-profit organization which old peoples' home provides housing, meals, laundry and infirmary services to aged persons and which is financed wholly or in part by charges made to its residents or wholly or in part by endowment, gifts or bequests or by a combination of the foregoing. This definition shall be construed as declaratory of the existing law and not as a new enactment. No hospital, however, which has been adjudicated by a court of competent jurisdiction to have denied admission to any person because of race, color or creed shall be exempt from taxation."

The definition of "old peoples home" in section 19.7 furnishes specific criteria for determining whether an institution providing care to the aged is eligible for a

Honorable Martin Rudman - 4.

property tax exemption as a charitable institution. According to your description, Salem Village Phase III meets these criteria. It is licensed by the State. The Lutheran Welfare Services of Illinois, which operates the Village, is a not-for-profit organization under the auspices of a religious organization. Salem Village Phase III will offer a wide range of services to its residents. Finally, Salem Village Phase III is not disqualified from tax exempt status by the fact that it will charge a fee for these services.

The legislature could not, however, declare that institutions meeting the specific criteria in section 19.7 are ipso facto tax exempt. Any tax exemption extended to homes for the aged must not deviate from the constitutional requirement that property exempted from taxation must be used exclusively for charitable purposes. (Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149.) The criteria specified in the definition of "old peoples home" is only illustrative of the type of institution eligible for a charitable tax exemption; the fact that an institution satisfies these

Honorable Martin Rudman - 5.

criteria is not conclusive proof that it is used exclusively for charitable purposes. (People ex rel. Norlund v. Ass'n. of Winnebago Home for the Aged, 40 Ill. 2d 91.) Therefore, the organization operating Salem Village Phase III must demonstrate that the institution's property is used exclusively for charitable purposes.

The concept of property use which is exclusively charitable does not lend itself to easy definition; as a result, each claim for a charitable tax exemption must be determined from an analysis of the particular facts of the case. (People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450.) Such an analysis is impossible without a detailed description of the operation of Salem Village Phase III. Thus, I cannot unequivocally conclude that Phase III is eligible for a charitable tax exemption. I can, however, refer you to decisions of the Illinois Supreme Court which furnish guidelines as to what constitutes exclusive use for a charitable purpose, insofar as old peoples homes are concerned.

Honorable Martin Rudman - 6.

The court in both Methodist Old Peoples Home v. Korzen, supra, at 156-7, and People ex rel. Norlund v. Ass'n. of Winnebago Home For Aged, supra, at 100-1, stated these guidelines as follows:

"It has been stated that a charity is a gift to be applied, consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare—or in some way reducing the burdens of government (Crerar v. Williams, 145 Ill. 625); that the distinctive characteristics of a charitable institution are that it has no capital, capital stock or shareholders, earns no profits or dividends, but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter, (People ex rel. Cannon v. Southern Illinois Hospital Corp., 404 Ill. 66; People ex rel. Hellyer v. Morton, 373 Ill. 72; Congregational Sunday School and Publishing Society v. Board of Review, 290 Ill. 108); that a charitable and beneficent institution is one which dispenses charity to all who need and apply for it, does not provide gain or profit in a private sense to any person connected with it, and does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits its dispenses. (Sisters of Third Order of St. Francis v. Board of Review, 231 Ill. 317); that the statements of the agents of an institution and the wording of its governing legal documents evidencing an intention

Honorable Martin Rudman - 7.

to use its property exclusively for charitable purposes do not relieve such institution of the burden of proving that its property actually and factually is so used, (Skil Corp. v. Korzen, 32 Ill. 2d 249; People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11); and that the term 'exclusively used' means the primary purpose for which property is used and not any secondary or incidental purpose."

The facts in Methodist Old Peoples Home and Ass'n. of Winnebago Home for Aged, as well as those in Willows v. Munson, 43 Ill. 2d 203, call attention to nursing home practices that merit special examination. Making a monthly charge for the services it furnishes does not diminish the charitable character of an institution as long as the charge does not result in a profit. However, the practice of requiring a resident to pay an entrance fee and to assign the title to his property when there is no assurance that this requirement is necessary to cover the cost of the care the resident will ultimately receive greatly weakens the institution's claim to a charitable exemption.

While recognizing that charging a fee is not repugnant to a charitable purpose, the court in the three

Honorable Martin Rudman - 8.

cases referred to above indicates that the fee requirement cannot be unswerving. The practice of never admitting persons who are unable to pay the required fee counteracts with the charitable nature of a nursing home. The principle that a charitable institution reduce the burden of government is not observed when the needs of less affluent elderly citizens are ignored.

The principle of reducing the burden of government is also contravened by the practice of setting stringent health standards for admission. The nursing homes involved in Methodist Old Peoples Home and in Ass'n. of Winnebago Home for Aged accepted only elderly persons who were in good health. The court indicated that this practice is inimical to the concept of charitable purpose and that a nursing home receiving a charitable tax exemption has a responsibility to provide care to elderly people who, because of health reasons, may have to seek public assistance.

I would suggest that your determination as to whether the property of Salem Village Phase III is used

Honorable Martin Rudman - 9.

exclusively for charitable purposes include both a reference to the guidelines stated by the Supreme Court and a special awareness of the nursing home practices outlined above.

Very truly yours,

A T T O R N E Y G E N E R A L