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Recommended Citation

Michael Lurie, *Taxation - Charitable Exemptions from Real Estate Taxes - What is a Charity*, 17 DePaul L. Rev. 433 (1968)
Available at: <https://via.library.depaul.edu/law-review/vol17/iss2/13>

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TAXATION—CHARITABLE EXEMPTIONS FROM REAL ESTATE TAXES—WHAT IS A CHARITY

The plaintiff, a nonprofit corporation, brought an action to obtain a tax refund based upon the contention that since its property was used exclusively for charitable purposes it was therefore entitled to a property tax exemption. The plaintiff's articles of incorporation stated that the purpose of the corporation was: "(b) To engage in other benevolent work of a charitable and religious nature and to participate, so far as circumstances may warrant, in any activity designed and carried on to promote the general health of the community."¹

Two of the institutions owned by the plaintiff, the Evangelical Lutheran Good Samaritan Society, were the type generally denominated as "nursing homes." Any adult twenty-one years of age or older and in need of help or care was eligible for admission into the Society's homes. The residents of the homes, who were able, were required to pay for the services rendered. In other cases, families of the home's residents made such payments. The County Welfare Department made payments in the case of indigent residents. All charges were based on the physical and mental condition of the individual residents, the degree of care required, and the expense incurred in caring for each resident. The payments made by the Welfare Department were made in accordance with the statewide rates recommended by the Department of Public Welfare. Some of the home's residents were apparently charged somewhat more than actual cost, but others were accepted on a basis of less than cost, depending apparently upon ability to pay. The two nursing homes operated in some years at a loss and in other years at a small profit. Occasionally small donations of goods, services or cash were received by these nursing institutions. The trial court found that the plaintiff was entitled to a charitable exemption and allowed its claim for a property tax refund. This decision was affirmed by the Nebraska Supreme Court. *Evangelical Lutheran Good Samaritan Society v. County of Gage*, 181 Neb. 831, 151 N.W.2d 446 (1967).

With property taxes on the rise, charitable tax exemptions are more valuable now than ever before. The problem is that the type of organization involved in the instant case generally does not receive sufficient donations to support its operations. Thus, to maintain its functions and accept as many charity patients (residents) as possible, financially responsible patients must be charged in excess of their cost. Despite contrary opinion, these organizations claim that their purpose and use is exclusively charitable, and that they are therefore the proper subject matter of a tax exemption as a

¹ *Evangelical Lutheran Good Samaritan Soc'y v. County of Gage*, 181 Neb. 831, 832, 151 N.W.2d 446, 447 (1967).

charity. The purpose of this note is to analyze the *Evangelical Lutheran* case in light of its contribution to any clarification of the borderline area where precise denomination of an organization as charitable is not possible.

An understanding of the basic concept of charity is necessarily antecedent to any discussion of charitable tax exemptions. A distinction must be made between the popular meaning of the word "charity" and its legal meaning. In common parlance, the term is usually defined as an act of aid to the needy.² Legally, the term is given a more extended significance. While no precise definition is universally accepted, one of the most comprehensive was stated by Mr. Justice Gray in *Jackson v. Phillips*:

A charity, in the legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, 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.³

While it is recognized that all property owners should equally bear the burden of government through property taxation,⁴ the need for charitable exemptions to state taxation has also long been recognized. The purpose of such exemptions was discussed in *Legat v. Adorno*:

The same purpose of the state has been manifest in the exercise of its traditional power of granting tax exemption to charitable hospitals. This like the grant of appropriations . . . has never been questioned. The obvious reason is that the care of the sick is essential to the public welfare. The need cannot be fully met by reliance solely on private hospitals operating from profit motivation. Provision for it must be made by charitable hospitals or the state. The grant of tax exemption to these hospitals . . . encourages and facilitates their performance of a governmental duty which would otherwise have to be performed by the state.⁵

The Nebraska statute, authorized by the state constitution,⁶ governing the principal case states that property will be exempt from taxation if it is owned and used exclusively for charitable purposes and is not used for financial gain or profit.⁷ The word "exclusively" as used in this statute, means the primary or dominant use rather than an incidental use.⁸ There are no set rules to determine whether an institution is charitable or not, and

² WEBSTER, THIRD NEW INTERNATIONAL DICTIONARY 378 (3d ed. 1961).

³ 96 Mass. (14 Allen) 539, 556 (1967).

⁴ Appeal of Price, 88 Okla. 156, 212 P. 424 (1923).

⁵ 138 Conn. 134, 144, 83 A.2d 185, 191 (1951).

⁶ NEB. CONST. art. VIII, § 2.

⁷ NEB. REV. STAT. ch. 77, § 202 (1943).

⁸ *The Lincoln Woman's Club v. City of Lincoln*, 178 Neb. 357, 133 N.W.2d 455 (1965).

each case must be decided on its own individual facts.⁹ The majority in the principal case determined that the nursing homes in question were used exclusively for charitable purposes within the meaning of the statute. This was based on their decision that the homes were enterprises for the good of humanity and not operated for private gain.

Another factor the court addressed itself to was the fact that some patients were charged more than actual cost. The court's position was that this did not deprive the institutions of their charitable character. There is much law to support this position and the reasoning behind this was discussed in *Tulsa County v. St. John's Hospital*:

If these incomes from pay patients and donations are used for the purpose of caring for or relieving the sick or disabled and increasing the facility for that purpose, and not used for the purpose of declaring dividends or the financial profit (other than paying of necessary operating expenses) of those connected with or having charge of the institution, such is simply an extended use for charitable purposes.¹⁰

The majority opinion in the principal case reviewed the operations of the nursing homes in question and, on the basis of this review and their decision that humanity was being served and no profit motive existed, determined that these homes were used exclusively for charitable purposes as required by the statute. It was contended by the dissent in the principal case that the nursing homes were not exclusively charitable, and that the intent of the law is not to exempt every nonprofit corporation which may be of some benefit to mankind. Decisions do support this position; and, simply being a nonprofit institution is not the same as being a charitable institution.¹¹ But it should be pointed out that these cases generally fall into the category of housing. Typical of these situations is *County of Douglas v. OEA Senior Citizens, Inc.*,¹² on which the dissent in the instant case heavily relied. The institution in the *OEA* case was a nonprofit home for the aged where an initial donation was required and predetermined monthly charges for occupancy were made. There was no profit motive involved and the purpose of the home was to provide services for elderly persons and an educational program in the field of geriatrics designed to contribute to health, happiness, and usefulness in longer living. The court denied the home a charitable exemption and declared that the furnishing of low cost housing at its real cost is not charitable. The dissent in the principal case states that it is difficult

⁹ *Krause v. Peoria Housing Authority*, 370 Ill. 356, 19 N.E.2d 193 (1939).

¹⁰ 200 Okla. 176, 178, 191 P.2d 983, 985 (1948).

¹¹ *Iota Benefit Ass'n v. County of Douglas*, 165 Neb. 330, 85 N.W.2d 726 (1957). *Cleveland Branch of Guild of St. Barnabas For Nurses v. Board of Tax Appeals*, 150 Ohio St. 484, 83 N.E.2d 229 (1948).

¹² 172 Neb. 696, 111 N.W.2d 719 (1961).

to see how the *Evangelical Lutheran* case can be distinguished from the *OEA* case.

While similarities do exist between the two factual situations, a distinction may be drawn. The *OEA* case deals mainly with housing. In the principal case the court analogized nursing homes to hospitals, where a variety of services are performed. But why do certain courts hold housing not to be a charitable use of property? Generally it is not the purpose of these old people's homes to provide housing for indigents and charity cases at reduced rates. Patrons are not charged on ability to pay but instead pay their share of the costs of operation. It is contended that these homes do not relieve the government of any burden. As stated in a recent decision: "Here, we have an enterprise to furnish low cost housing to a certain segment of our population. It was intended to be self supporting, without any thought that gifts or charity were involved. Also . . . there was no evidence that the public is relieved of any expense in comparison with the loss of tax revenue."¹³ This opinion follows other decisions with the same line of reasoning.¹⁴ One case directly stated that it is not the duty of the government to furnish homes to older adults.¹⁵

The dissenting opinion in *Evangelical Lutheran* contended that the majority holding would allow every nursing home in the state to avoid taxation by incorporating as a nonprofit corporation and still withdraw all profits in salaries and expenses. An almost identical situation took place in *Malone-Hogan Hospital Clinic Foundation, Inc. v. The City of Big Spring*¹⁶ where a hospital claimed an exemption as a nonprofit charitable institution. Certain doctors fixed their salaries depending upon the profits of the hospital. The court said this was a question of fact, and if the fixing of salaries was merely a device for securing profits then the institution was not entitled to a charitable exemption.

The law of Illinois on this matter is in several respects quite similar to the Nebraska statute which was the center of the court's attention.¹⁷ Property

¹³ *Mountain View Home, Inc. v. State Tax Comm'n*, 77 N.M. 649, 655, 427 P.2d 13, 17 (1967).

¹⁴ *Philada Home Fund v. Board of Tax Appeals*, 5 Ohio St. 2d 135, 214 N.E.2d 431 (1966). *Haines v. St. Petersburg Methodist Home, Inc.*, 173 So. 2d 176 (Fla. 1965).

¹⁵ *Hilltop Village, Inc. v. Kerrville Independent School Dist.*, 410 S.W.2d 824 (Tex. Civ. App. 1966).

¹⁶ 288 S.W.2d 550 (Tex. Civ. App. 1956).

¹⁷ ILL. REV. STAT. ch. 120, § 500.7 (1965), exempts ". . . all property of beneficent and charitable organizations . . . 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 . . ." NEB. REV. STAT. ch. 77, § 202 (1943), reads as follows: "(1.) The following property shall be exempt from taxes: . . . (c) Property owned and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not owned or used for financial gain or profit to either the owner or user . . ."

used exclusively for charitable or beneficent purposes is exempt from taxation.¹⁸ In Illinois, as in Nebraska, the word "exclusively" means the primary use, not an incidental use.¹⁹ Illinois law differs, however, in one material respect. In Nebraska the use of property does not have to be "exclusively" charitable, religious, or educational. These areas of tax exemption are not distinct and mutually exclusive. Property may be concomitantly used for all three, and the question of proportion of use is not raised.²⁰ In Illinois the property must not only be used exclusively for charitable purposes, it must also be owned by a charitable organization. That is, in Illinois, the property must be used exclusively for one exempted purpose or no exemption is given. In one case a charitable hospital was denied a tax exemption because it was owned by a religious organization.²¹

This distinction between Illinois and Nebraska law is quite important when applied to the principal case. The decision would turn on the question of whether the Evangelical Lutheran Good Samaritan Society is a religious or charitable organization.

The absence of a profit motive is important in Illinois. Similar to Nebraska, the Illinois exemption statute specifically rules out property with a view towards profit.²² Also in Illinois, as in other jurisdictions, those who are able to pay may be charged without defeating the charitable character of the organization.²³

As stated previously, the instant case is close to the thin line dividing exclusively charitable and not exclusively charitable organizations. In analyzing this case and similar fact situations it is important that not too much reliance be put on any one prior decision. Instead a study of many decisions is needed before a pattern can be set. One case which most explicitly sets a standard is *Oregon Methodist Homes, Inc. v. Horn*.²⁴ In this case the Oregon Supreme Court surveyed its past decisions to find what elements had received their consideration in persuading them to a conclusion that the entity was or was not a charity. The court found the following six elements, which can also be found in the decisions of other jurisdictions:

¹⁸ *Id.*

¹⁹ *First Nat'l Bank of Danville v. Ryan*, 23 Ill. 2d 250, 177 N.E.2d 854 (1961); *People ex rel. Marsters v. Rev. Saletyni Missionaries*, 409 Ill. 370, 99 N.E.2d 186 (1951); *Turnverein "Lincoln" v. Board of Appeals of Cook County*, 358 Ill. 135, 192 N.E. 780 (1934).

²⁰ *Supra* note 8.

²¹ *People ex rel. Wilson v. St. Mary's Roman Catholic Hosp. of Centralia*, 306 Ill. 174, 137 N.E. 865 (1922).

²² *Supra* note 17.

²³ *Congregational Sunday School & Publishing Soc. v. Board of Review*, 290 Ill. 108, 125 N.E. 7 (1919).

²⁴ 226 Ore. 298, 360 P.2d 293 (1961).

- (1) Whether the receipts are applied to the upkeep, maintenance and equipment of the institution or are otherwise employed
- (2) Whether patients or patrons receive the same treatment irrespective of their ability to pay
- (3) Whether the doors are open to rich and poor alike and without discrimination as to race, color or creed
- (4) Whether charges are made to all patients and, if made, are lesser charges made to the indigent
- (5) Whether there is a charitable trust fund created by benevolent and charitably-minded persons for the needy or donations made for the use of such persons
- (6) Whether the institution operates without profit or private advantage to its founders and the officials in charge.²⁵

The court then stated that the foregoing factors do not all have to be present before a given institution can be declared charitable. Also, the list does not include all items which may assist an institution in obtaining a charitable exemption.

The decision in *Evangelical Lutheran* represents the law in the majority of American jurisdictions. In a recent decision rendered in Louisiana,²⁶ the court observed that there is an increasing antithetical trend. A study of cases decided during the last ten years does not support this contention.²⁷ The area is still one of unpredictability. While it is helpful to have criteria laid down by a court applied to a particular factual situation, the result of a court's applying these criteria cannot be predicted with any accuracy. The decision in the noted case could have gone the other way and nursing homes in the same situation cannot take heart because the court might reach a different conclusion on a similar set of facts. The borderline area is difficult to delineate and unfortunately the principal case does not add much light to the problem.

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²⁵ *Holmes v. Horn*, 226 Ore. 298, 309, 360 P.2d 293, 298 (1961) (internal citations omitted).

²⁶ *Ruston Hosp. Inc. v. Riser*, 191 So. 2d 665 (La. App. 1966).

²⁷ *Vick v. Cleveland Memorial Medical Found.*, 2 Ohio St. 2d 30, 206 N.E.2d 2 (1965); *Topeka Presbyterian Manor, Inc. v. Board of County Comm'rs of Shawnee County*, 195 Kan. 90, 402 P.2d 802 (1965); *Hungerford Convalescent Hosp. Ass'n v. Osborn*, 150 So. 2d 230 (Fla. 1963); *City of Richmond v. Richmond Memorial Hosp.*, 202 Va. 86, 116 S.E.2d 79 (1960).