



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

0-5-5-94
 GERALD C. MANN
 ATTORNEY GENERAL

Honorable Leroy L. Moore
 County Attorney
 Houston County
 Crockett, Texas

Dear Sir:

Opinion No. 5599

Re: Whether the Butler Memorial Hospital, Inc., is exempt from taxes on its real and personal property on the grounds of being a charitable institution.

Your letter of recent date requesting the opinion of this department regarding the above stated subject reads in part as follows:

"Please do me a personal favor by going to the Secretary of State and looking at the charter issued to Dr. O. W. Butler, Jr., Allie Maude Butler and Charlie Frank Butler of Crockett, Incorporators, of the Butler Memorial Hospital of Crockett, Texas. The Secretary of State advises me that on November 17, 1942 the Butler Memorial Hospital was incorporated under the Laws of Texas with no capital stock. He also advises me that this corporation is exempt from the State Franchise Tax. I would like for you to give me an opinion for the Commissioners' Court of Houston County as to whether this Institution which was incorporated as a "purely Benevolent, Charitable and Educational, and not for financial gain," is exempt from State and County Taxes other than State Franchise Tax. In other words, the Commissioners' Court has assessed the property for taxes and desires to collect the taxes on the property if not exempt as such Charitable Institution.

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"You will remember when I was in Austin last week, you had copies of the opinion on Benevolent and Charitable Institutions sent me and I have these opinions. Not knowing under what Statute this Institution was chartered, I am unable to determine whether this Butler Memorial Hospital is tax exempt. Would thank you to furnish me this opinion at your earliest convenience."

Article 8, Section 2 of the State Constitution provides that "the Legislature may by general laws exempt from taxation . . . institutions of purely public charity; and all laws exempting property from taxation other than the above mentioned shall be null and void."

Section 7 of Article 7150, Vernons Annotated Civil Statutes, was enacted in pursuance to the above constitutional provision, and reads as follows:

"7. Public charities. All buildings belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions not leased or otherwise used with a view to profit, unless such rents and profits and all moneys and credits are appropriated by such institutions solely to sustain such institutions and for the benefit of the sick and disabled members and their families, and the burial of the same, or for the maintenance of persons when unable to provide for themselves, whether such persons are members of such institutions or not. An institution of purely public charity under this article is one which dispenses its aid to its members and others in sickness or distress, or at death, without regard to poverty or riches of the recipient, also when the funds, property and assets of such institutions are placed and bound by its laws to relieve, aid and administer in any way to the relief of its members when in want, sickness and distress, and provide homes for its helpless and dependent members

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and to educate and maintain the orphans of its deceased members or other persons."

The Butler Memorial Hospital has no capital stock and its charter contains the following recitals, among others:

"Section 2. The purposes for which this corporation is formed are purely benevolent, charitable, and educational, and not for financial gain, and no financial gain shall ever accrue to any member of this corporation, nor any other person or institution in the conduct of the same, but any receipts of this corporation in excess of the expense of erection and maintenance of said institution or institutions provided for herein shall be applied by the Directors to the care of charity patients, and to the equipment and enlargement of said institutions, to carry out the purposes of its organization and operation, as they in their judgment may deem wise. It is organized to acquire or erect, and to equip, conduct and maintain, on the broadest humanitarian principals, a hospital or hospitals, and school or schools for nurses, to care for the sick and injured, and to educate and train persons in the care of the sick and injured, issuing to such persons diplomas upon graduation, and erecting and conducting such hospital or hospitals, school or schools, or other institutions as may be necessary or desirable to carry out all of the said purposes. In order that only competent, legal, skilled, and reputable physicians and surgeons shall practice, operate and/or treat patients in the Hospital, or Hospitals, or other institutions owned, controlled and/or conducted by this corporation, the Board of Directors shall have full and plenary powers to elect and select, in the manner such Board of Directors may deem best, the physicians and/or surgeons who shall be permitted to so practice, and to prescribe and promulgate laws, rules, and regulations for the government of such hospital, hospitals, or other institutions, and of such physicians, surgeons, and of the patients, nurses, officers, visitors, employees,

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and others therein or connected therewith. The Directors shall have all authority and powers conferred upon Directors, by law, and such other authority and power as is usually held by directors of similar corporations."

If the Butler Hospital is an institution of purely public charity within the meaning of Article 8, Section 2 of the State Constitution, and Subdivision 7 of Article 7051, Vernon's Annotated Civil Statutes, the real estate belonging to said hospital would be tax exempt. (See the cases of Santa Rosa Infirmary v. City of San Antonio, 259 S. W. 926; Fire Association of Philadelphia v. Love, 108 S. W. 158, 810; Benevolent and P. O. E. Lodge v. City of Houston, 44 S. W. (2d) 488; Masonic Temple Association v. Amarillo Independent School District, 14 S. W. (2d) 128; City of Palestine v. Missouri Pacific Land Hospital Association, 99 S. W. (2d) 311; Scott v. All Saints Hospital, 203 S. W. 146; State v. Seddegast, 227 S. W. 253)

Whether the Butler Memorial Hospital is an institution of purely public charity within the meaning of Article 8, Section 2 of the State Constitution, and Subdivision 7 of Article 7051, Vernon's Annotated Civil Statutes, is a fact question which we cannot determine. If, as above stated, said hospital is an institution of purely public charity within the meaning of the Constitution and Statutes, then the real estate belonging to said hospital would be tax exempt. However, on the other hand, if such hospital is not an institution of purely public charity within the meaning of Article 8, Section 2 of the State Constitution, and Subdivision 7 of Article 7051, Vernon's Annotated Civil Statutes, its real estate would not be tax exempt. It is our opinion that the proper local authorities must determine from the actually existing facts whether the Butler Memorial Hospital is an institution of purely public charity, within the meaning of the above mentioned provisions of the Constitution and Statutes.

With reference to the personal property belonging to the Butler Memorial Hospital we direct your attention to our Opinion No. 0-5114, a copy of which is enclosed for your convenience.

Yours very truly

ATTORNEY GENERAL OF TEXAS

RECEIVED
MAY 10 1943
Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

By Ardell Williams

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Assistant

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