



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

September 19, 1961

Honorable Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Opinion No. WW-1141

Re: Exemption from inheritance
tax of devise to an Okla-
homa charitable trust
under submitted facts.

Dear Mr. Calvert:

You have requested that we advise you as to whether a devise to an Oklahoma charitable trust is exempt from an inheritance tax by virtue of that portion of Article 14.06, 20-A, Tax.-Gen., Vernon's Annotated Texas Statutes, which reads as follows:

"Provided, further, that if the property so passing is to or for the use of a religious, educational, or charitable organization which conducts its operations on a regional basis, one such region of which includes the State of Texas, or any part thereof, then a bequest, devise or gift to be used within such region shall be deemed to be used within this state.

"For purposes of this paragraph a region shall comprise not more than five contiguous states, either in whole or in part, one of which is the State of Texas.

"For purposes of this paragraph, a religious, educational, or charitable organization shall include, but not be limited to, a youth program of physical fitness, character development, and citizenship training or like program."

In connection with your request you have advised us of the following facts. Charles Morton Share, hereinafter referred to as the decedent, died June 13, 1959, a resident of Woods County, Oklahoma. By the residuary clause of his will, the decedent devised Texas real property, valued at \$596,361.00, to the "Charles

Morton Share Trust."

Prior to his death, the decedent had created this charitable trust in the State of Oklahoma. The trust purposes, as stated in the Trust Agreement, are for general charitable purposes. The Trust Agreement does not contain any geographical limitations on the expenditure of the trust funds; nor does it prescribe any particular method of geographical operation. On the other hand, there is no limitation in the Trust Agreement which would prevent the Trustees from conducting their operations on a regional basis. Indeed, in addition to their general powers, the Trustees are specifically authorized to engage or employ any persons they may desire to engage or employ for the performance of any services to the Trust, including an Executive Director. The Trustees are also expressly authorized to erect such buildings as they may deem advisable on real property in any location. Further, the Trustees are authorized to execute all instruments necessary or proper for the accomplishment of the purposes of the Trust. The Trust Agreement does contain the following provision in Section 2 of Article VI:

"This agreement is executed and delivered in the State of Oklahoma; the situs shall be in that State; and it shall be governed by, and construed and administered in accordance with the laws of that State."

The Board of Trustees is required to file annual reports in the District Court of Woods County, Oklahoma and furnish copies of said reports to the Attorney General of the State of Oklahoma.

The Board of Trustees have agreed to execute a Resolution for the purpose of complying with the provisions of Article 14.06 above quoted and obtaining an exemption from an inheritance tax. Specifically then, the question which you have submitted to us is whether the Resolution, if executed, will effectuate exemption from an inheritance tax. The Resolution reads as follows:

"RESOLUTION OF THE BOARD OF TRUSTTES OF THE
CHARLES MORTON SHARE TRUST ADOPTED AT
SPECIAL MEETING HELD AUGUST __, 1961

"WHEREAS, Charles Morton Share died testate on June 13, 1959, and was a resident of the City of Alva, County of Woods, State of Oklahoma, at the time of his death and owned property situated within the State of

Oklahoma and the State of Texas and other states; and

"WHEREAS, the Charles Morton Share Trust is the principal beneficiary of the estate of Charles Morton Share, deceased, under his last will and testament, and is the devisee and legatee of all property owned by the deceased situated in the State of Texas, together with other property situated in other states; and

"WHEREAS, the last will and testament of Charles Morton Share, deceased, has been duly probated in Cause No. 3569 in the County Court of Woods County, Oklahoma, the decree of distribution having been entered by said Court on June 27, 1961, and said decree of distribution being now a final order; and

"WHEREAS, the property of the estate situated within the State of Texas is now subject to temporary administration proceedings in the County Court of Ochiltree County, Texas, Cause No. 793, and has a value of approximately Six Hundred Thousand Dollars (\$600,000.00); and

"WHEREAS, the said Charles Morton Share Trust is an organization established by the said Charles Morton Share solely for charitable purposes, as evidenced by a certain trust indenture dated June 12, 1959, and hereinafter referred to as the 'Trust' and the Board of Trustees of which is hereinafter referred to as the 'Board'; and

"WHEREAS, said Texas property constitutes a substantial portion of the estate of Charles Morton Share, deceased, and has received and will continue to receive the protection of the laws and government of the State of Texas and the Board therefore recognizes a moral obligation to expend and use said income exclusively within a geographical area including the State

of Texas to the end that said expenditures will effect a substantial benefit to the people of Texas; and

"WHEREAS, in order to act upon its desire to expend the income from the Texas property within a geographical area including the State of Texas and for the additional purpose of availing itself of a legal exemption from payment of inheritance taxes to the State of Texas under the provisions of Article 14.06, Title 122-A, Revised Civil Statutes of Texas, said Board at a special meeting held December 28, 1960, adopted a resolution whereby it irrevocably committed funds accruing to the Trust from the Texas property for charitable use and expenditure within the geographical boundaries of a region composed of the States of Texas and Oklahoma and bound itself to keep books and records separately accounting for the income derived from said Texas property; and

"WHEREAS, administration of the Texas property in Cause No. 793 in the County Court of Ochiltree County, Texas, will be closed as soon as practicable after determination of the inheritance tax liability, if any, of the estate of Charles Morton Share, deceased, to the State of Texas, and whereas, on termination of said administration proceedings the Texas property shall be transferred to the Board and operations of the charitable trust will then begin on a regional basis within the region comprised of the States of Texas and Oklahoma; and

"WHEREAS, prior to the determination of the applicability of the provisions of said Article 14.06, above referred to, the appropriate officials of the State of Texas have requested of the Board certain assurances with respect to its manner of operation of said

trust on a regional basis so as to enable said officials to accurately determine whether said estate of Charles Morton Share, deceased, is in fact exempt from the inheritance tax of the State of Texas; and

"WHEREAS, the Board desires to make said assurances to said officials of the State of Texas,

"NOW, THEREFORE, IT IS HEREBY RESOLVED:

"That not less than Five Thousand Dollars (\$5,000.00) in any one fiscal year during the period of ten fiscal years immediately following the commencement of regional operations nor in the aggregate not less than One Hundred Thousand Dollars (\$100,000.00) during such period shall be expended and disbursed by the Board for charitable purposes within the geographical limits of the State of Texas; and

"BE IT FURTHER RESOLVED that for the purpose of providing a convenient method for the appropriate authorities of the State of Texas to ascertain whether compliance with this irrevocable commitment is in fact being made, a copy of each of the annual reports required to be filed in the District Court of Woods County, Oklahoma, under the provisions of Article V of said trust agreement, shall be sent by certified or registered United States mail to the Attorney General of the State of Texas, within five (5) days after the date on which each such report shall be filed in the District Court of Woods County, Oklahoma; and

"BE IT FURTHER RESOLVED that as soon as practicable after the commencement of regional operations the Board shall designate one or more persons, residents of Texas, as its

agent or agents for the purpose of according and facilitating contact with the Board, screening applications for benefits, making recommendations, and locally facilitating the disbursement of funds to charitable institutions and facilities located within the State of Texas; and

"BE IT FURTHER RESOLVED that jurisdiction of said Trust and its Board and venue for trial of any action at law or suit in equity which may be brought by the State of Texas through its Attorney General or other appropriate official for any alleged violation of the letter or spirit of this resolution shall lie, and by agreement is hereby vested, in any court of competent jurisdiction situated within the boundaries of Travis County, Texas; and

"BE IT FURTHER RESOLVED that no donation or contribution in any form whatever shall be made to any charitable institution or facility nor shall any charitable facility be erected from funds created by the Texas properties which excludes from its benefits, bounty or operation residents or citizens of the State of Texas because of such residency or citizenship.

"BE IT FURTHER RESOLVED that the appropriate officials of the State of Texas and particularly its Attorney General and Comptroller shall and may rely upon the truth in fact of all recitations of fact hereinabove set forth; and

"BE IT FURTHER RESOLVED that all terms of this resolution shall remain forever irrevocable; and

"BE IT FURTHER RESOLVED that copies of the Trust Agreement dated June 12, 1959, the Resolution of the Board of Trustees adopted on December 28, 1960, and of this Resolution, all duly certified as authentic copies, shall forthwith be furnished to the Attorney General of the State of Texas."

At the outset, we are faced with the question of whether a charitable organization must be operating on a regional basis at the date of the decedent's death in order to be entitled to exemption. Since in that portion of Article 14.06¹ which immediately precedes the provisions we are here considering, exemption is allowed where there is an irrevocable commitment for use exclusively within this State subsequent to the date of decedent's death and prior to the payment of the tax, we have concluded that it would be inconsistent with the spirit of the statute to require that the charitable beneficiary be operating on a regional basis at the date of the decedent's death if regional operations are effectuated prior to the payment of the tax.

The second question is whether the proposed Resolution and the plan of operations set forth therein constitutes "operations on a regional basis" within the meaning of the statute. We think that the Legislative history of Article 14.06, formerly Article 7122, V.C.S., is pertinent to a determination of this question. Prior to its amendment in 1955, Article 7122 had provided an exemption for property passing "to or for the use of any religious, educational or charitable organization when such bequest, devise or gift is to be used within this State."

This provision had been construed by our courts as requiring the limitation to use within this State to be expressed in the will, even though the charitable beneficiary irrevocably committed the devise and bequest to use within this State subsequent to the death of the decedent and prior to the payment of the tax. Presbyterian Church in the U. S. v. Sheppard, 198 S.W.2d 282, (Tex.Civ.App., 1946, error ref., n.r.e.).

In 1955, Article 7122 was amended by providing, in effect, that property passing to religious, educational or charitable organizations could gain exemption from inheritance taxes, even though the instrument effectuating transfer did not require that

¹ This portion of the statute is more fully discussed hereafter.

the charitable gift be used within this State, by irrevocably committing such gift to use within this State prior to the payment of inheritance taxes.²

The decision in the Presbyterian Church case, supra, was based on the proposition that the tax accrued as of the date of death of the decedent and that therefore any subsequent limitation as to use within this State could not effectuate exemption. The evident purpose of the 1955 amendment was to allow exemption for charitable devises, bequests and gifts if this State will receive benefit therefrom, even though the instrument effectuating the transfer did not itself require that the charitable devise, bequest or gift be used within the State. Mr. Justice Norvell recognized the "benefits" doctrine as the basis for exemption under our statute even prior to the 1955 amendment. In G.A.C. Halff Foundation v. Calvert, 281 S.W.2d 178 (Tex.Civ.App. 1955, error ref., n.r.e.), he stated at page 181:

" . . . The Legislature has thus decided that the greater good may be served by exempting certain property from taxation, considering the use to which it is dedicated. A use of property which alleviates a burden which the State or its political subdivisions would otherwise necessarily bear at public expense, or a use thereof which fulfills or accomplishes the generally accepted charitable objectives of the people of the State, is recognized as a proper subject of tax exemption by specific legislative enactments. . . . "

In 1959, the 56th Legislature further enlarged charitable exemptions by extending the geographical limitations on use and thereby departed from the former concept that exemption would be accorded charitable devises, bequests and gifts only if their ~~use was~~ limited to this State. Some remnants of the doctrine of benefits remain since the State of Texas must constitute a part of the region which is the recipient of the charitable bequest, devise or gift. The Legislature did not see fit to provide any yardstick for measuring the amount of benefits which this State should receive from the charitable organization operating on a regional basis; yet it is evident that the Legislature did not

² Senate Bill 266, Acts 1955, 54th Leg., Chapter 389, p. 1032.

intend to accord an exemption for all charitable bequests, devises or gifts since this regional exemption provision is limited to regions of not more than five contiguous states, either in whole or in part, one of which is the State of Texas. Therefore, necessarily the statute contemplates that this State receive some benefit before exemption will be allowed. Since we have no fixed legislative standard to use as a guide, we are of the opinion that each particular case must rest upon its own facts, and that if the facts show that this State will receive substantial benefit as a result of the regional operations of the charitable organization, exemption should be accorded. We turn, therefore, to an examination of the benefits which will flow to this State if the proposed Resolution is adopted.

The Resolution recites that the Texas property has a value of approximately \$600,000.00. You have advised us that if exemption is not allowed, the Trust will owe an inheritance tax in an amount of approximately \$71,000.00.

The specific benefits guaranteed by the resolution are the following:

(1) ". . .the Board recognizes a moral obligation to expend and use said income [from the Texas property] exclusively within a geographical area including the State of Texas to the end that said expenditures will effect a substantial benefit to the people of Texas; . . ."

(2) The Board has irrevocably committed funds accruing from the Texas property for charitable use and expenditure within the geographical boundaries of a region composed of the State of Texas and Oklahoma and has further bound itself to keep books and records separately accounting for the income derived from the Texas property.

(3) The Board has obligated itself to expend ". . .not less than Five Thousand Dollars. . . in any one fiscal year during the period of ten fiscal years immediately following the

commencement of regional operations nor in the aggregate not less than One Hundred Thousand Dollars. . .during such period. . ." within the State of Texas.

(4) The Board has guaranteed that no charitable facility will be erected from funds created by the Texas properties nor will any donation or contribution be made from such funds to any charity which excludes from its benefits residents of the State of Texas because of such residency."

Under the terms of the resolution, the Board plans to commence regional operations by designating "one or more persons, residents of Texas, as its agent or agents for the purpose of according and facilitating contact with the Board, screening applications for benefits, making recommendations, and locally facilitating the disbursement of funds to charitable institutions and facilities located within the State of Texas; . . ."

As a further evidence of the Board's good faith in executing the Resolution in question, the Board has agreed to furnish to the Attorney General of the State of Texas a copy of each of the annual reports which the Trust is required under the provisions of the Trust Agreement to file in the District Court of Woods County, Oklahoma. The Board further agrees that should any suit be brought by the State of Texas for any violation of the letter or spirit of the proposed Resolution, ". . .jurisdiction of said Trust and its Board and venue. . .of any action . . .shall lie. . .in any court of competent jurisdiction. . ." in Travis County, Texas. The terms of the Resolution are declared to be irrevocable.

In view of these guarantees, we can only conclude that the State of Texas will receive substantial benefit from the regional operations of the Trust.

Although the Board in the Resolution adopted in December, 1960, has created three other regions in addition to the region consisting of Texas and Oklahoma, no evidence of the Trust's operations within these regions has been submitted to us; and we will therefore consider whether regional operations within the single region of Oklahoma and Texas satisfy the requirements of the statute. The statute refers to a charitable organization "which conducts its operations on a regional basis, one such region of which includes the State of Texas, or any part thereof. . ."

Although national organizations operating on a regional basis are clearly within this provision, we do not regard the last quoted portion of the statute as requiring the existence of more than one region as a requisite to coming within statutory meaning of "operations on a regional basis". Here again, the guide to the interpretation of the statute should be the test of benefits to this State; and if the phrase "one such region of which includes the State of Texas, or any part thereof, . . ." be interpreted as requiring the existence of a national organization divided into regions, or even an organization not national in scope but conducting operations in more than one region, the "benefits" test becomes meaningless. It can make no difference whether there is more than one region since no benefits would accrue to the State by virtue of the existence of other regions.

S U M M A R Y

A charitable organization need not be operating on a regional basis at the date of the decedent's death in order to gain exemption from an inheritance tax under Article 14.06, 20-A, Tax.-Gen., V.A.T.S., if bona fide regional operations are commenced prior to the payment of the tax. Operations on a single regional basis satisfy the requirements of the statute if the region includes the State of Texas, or any part thereof, and is comprised of not more than five contiguous states.

Yours very truly,

WILL WILSON
Attorney General of Texas

By Marietta McGregor Payne
Marietta McGregor Payne
Assistant

MMcGP:jp

APPROVED:

OPINION COMMITTEE:
W. V. Geppert, Chairman

Henry Braswell
Riley Eugene Fletcher
John Reeves
T. B. Wright

REVIEWED FOR THE ATTORNEY GENERAL
By: Houghton Brownlee, Jr.