



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

October 10, 1961

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

Opinion No. WW-1160

Re: Exemption from inheritance
tax of devise to Shriners
Hospitals for Crippled
Children under submitted
facts.

Dear Mr. Calvert:

In connection with your request on the above-captioned matter, you have advised us of the following facts. L. Alberta Watkins and her husband, who predeceased her, had executed a joint and mutual will. Paragraphs 3 and 5 of this will read as follows:

"3. In case of a common disaster of the undersigned testators causing the death of each of us, then, in that event, we jointly and severally devise and bequeath all of the property, whether real, personal or mixed of which we may die seized and possessed to Shriners Hospital for Crippled Children, a Corporation, for the use and benefit of the hospitals owned, operated, and maintained by said Corporation.

". . .

"5. In case either testator survives the other, but makes no other or later will, then in such event, the estate of such survivor shall pass under and according to the program of distribution set forth in numerical Paragraph Three above."

Article 14.06, Title 122A, 20-A, Tax.-Gen., Vernon's Annotated Texas Statutes, provides an exemption from inheritance taxes for transfers to charitable organizations if such charitable organizations are to use the gift within this State. Article 14.06 also contains the following further provisions for exemption 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."

The Attorneys for Shriners Hospitals for Crippled Children have supplied you with certain information which they deem pertinent in the determination of the taxability of the devise in question and which is offered in support of their position that said devise is exempt from an inheritance tax. We quote the following excerpt from the letter submitted to you in connection with this matter.

"Shriners Hospitals for Crippled Children is a wholly charitable corporation organized pursuant to the laws of the State of Colorado. This organization owns and operates hospitals for crippled children located in different parts of the country; one such hospital being located in Shreveport, Louisiana, which services the region of Texas, Arkansas, Mississippi, and Alabama. In other words, crippled children of parents financially unable to supply needed orthopedic care, hospitalization and surgical treatment from the states mentioned are admitted for treatment at our Shreveport, Louisiana, hospital entirely without cost. Over the years since our hospitals have been in existence, many crippled children from the State of Texas have been admitted for treatment at a cost of many thousands of dollars which might otherwise have been spent in treating such children in public institutions within the State of Texas.

"Shriners Hospitals for Crippled Children have always been affiliated with the Imperial Council of the Ancient Arabic Order of the Nobles of the Mystic Shrine of North America,

a fraternal order. The charitable corporation was organized to operate the hospitals which administer the charitable work of the Shrine fraternal order. The Shrine is operated under the so-called Lodge System form of government, which means that Shrine Temples are chartered by the parent body and are located throughout the country. Eleven such Shrine Temples are located in the State of Texas, one such temple being in Austin and another in Dallas, where the Watkins estate is being administered. The other temples are at Amarillo, El Paso, Wichita Falls, Fort Worth, San Angelo, San Antonio, Waco, Houston and Galveston. The members of the Shrine fraternal order make annual payments toward the operation and maintenance of Shriners Hospitals for Crippled Children and the various Shrine Temples are responsible for locating and processing crippled children who are eligible for admission to our hospitals. The Shrine Temples also provide transportation for the children to and from the hospitals and assist in many other ways in furthering the charitable endeavors of the organization.

". . .

"As indicated above, the funds to be received by Shriners Hospitals for Crippled Children from the estate of L. Alberta Watkins will be used at the Shreveport, Louisiana unit of Shriners Hospitals for Crippled Children for the care and treatment of crippled children from the State of Texas. An affidavit to such effect over the signature of one of our corporate officers was to have been attached to the inheritance tax report. . ."

The submitted affidavit was signed by George M. Saunders, Secretary of the Shriners Hospitals for Crippled Children. The substance of the affidavit is that George M. Saunders is the Secretary of the Shriners Hospitals for Crippled Children and that, as such officer, he is authorized to make the statements contained in the affidavit on behalf of the Shriners Hospitals. These statements are to the effect that the Shriners Hospitals for Crippled Children is a charitable

Colorado corporation owning and operating hospitals for Crippled Children throughout the country and providing care for children of parents financially unable to provide such care. He states that the Hospitals are administered and operated on a regional basis and that one such hospital unit is located at Shreveport, Louisiana, and is known as the Shreveport unit of Shriners Hospitals for Crippled Children. He states that children from the State of Texas are treated there and that it is hereby ". . . stipulated and agreed that the funds and/or assets received by Shriners Hospitals for Crippled Children from the estate of L. Alberta Watkins will be expended exclusively for the care, surgery, hospitalization and treatment of crippled children who are residents and domiciliaries of the State of Texas at the Shreveport, Louisiana, unit of said Shriners Hospitals for Crippled Children wholly without charge;. . ."

Attached to the affidavit is a copy of a resolution adopted by the Board of Directors of Shriners Hospitals for Crippled Children at a regular meeting held in Miami, Florida, on June 15, 1961. This resolution provides, in part, that, among other officers, the Secretary is authorized, directed and empowered in the name and in behalf of Shriners Hospitals for Crippled Children, a Colorado corporation, to take certain enumerated legal steps. Paragraph 3 of the resolution reads as follows:

"To make and execute all necessary contracts and documents affecting the property of Shriners Hospitals for Crippled Children, and other properties of the corporation;"

Paragraph 9 reads as follows:

"To make and execute any and all papers and documents as may be necessary from time to time to comply with the laws of the state in which any of the properties of the corporation may be located for the purpose of protecting and safeguarding the same;"

Paragraph 10 reads as follows:

"To make and execute such agreements, papers and documents as may be necessary from time to time to settle any controversies over the properties of the corporation, or such suits as may be pending affecting the properties of the corporation, and as may

be deemed necessary for the protection of the properties of the corporation;"

The foregoing facts clearly satisfy the requirements of the statute. The limitation as to the use and expenditure of the devise is in no way inconsistent with the terms of the will. The Secretary of Shriners Hospitals for Crippled Children is plainly authorized to so bind the corporation. The regional operation of the Shriners Hospitals for Crippled Children within the states of Texas, Arkansas, Mississippi and Alabama meets the statutory requirement that the region shall comprise not more than five contiguous states, either in whole or in part, one of which is the State of Texas.

In Attorney General's Opinion No. WW-1141, the following statement appears in connection with the proper construction of the statutory provision here under consideration:

" . . .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 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 . . . "

The "benefits test" established by Opinion No. WW-1141 as determinative of exemption has been met in this case by irrevocably committing the devise in question for the use and benefit of the crippled children of this State. You are, therefore, advised that the devise is exempt from an inheritance tax.

S U M M A R Y

A devise to Shriners Hospitals for Crippled Children, a Colorado charitable corporation, is exempt from an inheritance tax under Article 14.06, 20-A, Tax.-Gen., V.A.T.S., by virtue of the corporation's

regional operation in the states of
Texas, Arkansas, Mississippi, and Alabama
and by its irrevocable commitment of the
devise for the use and benefit of the
crippled children of this State.

Very truly yours,

WILL WILSON
Attorney General of Texas

By *Marietta McGregor Payne*
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Assistant

MMP:lmc

APPROVED:

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