



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

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ATTORNEY GENERAL

June 15, 1973

The Honorable Dolph Briscoe  
Governor of the State of Texas  
State Capitol Building  
Austin, Texas 78711

Letter Advisory No. 52

Re: The constitutionality of House Bill 1165 relating to tax exemptions for certain property of certain corporations providing homes for elderly persons or handicapped persons.

Dear Governor Briscoe:

You have forwarded to us a copy of House Bill 1165, which has been adopted by the Legislature and presented to you for signature. This Bill would amend the previously adopted Section 24 of Article 7150 (Acts 1969, 61st Leg., p. 1943, Ch. 647) so that it would now read (with the added language underlined):

"24. There is exempt from taxation all real and personal property used by any non-profit corporation organized for the purpose of providing homes for elderly people sixty-two (62) years of age or older or handicapped persons which has no capital stock, where the management of its affairs is vested in a board of trustees who are selected by a church which is a strictly religious society or a corporation organized for the purpose of providing homes for elderly people sixty-two (62) years of age and older or handicapped persons not for profit, and where the Articles of Incorporation provide that in the event of a dissolution of the corporation all of its assets and property will go to and vest in said church or a non-profit corporation of like purpose. Such non-profit corporation shall be entitled to the exemption granted herein so long as such non-profit corporation has a current exemption from federal income tax. In the event such

federal income tax exemption shall be withdrawn or no longer is current, the exemption herein granted shall be null and void. The Comptroller of Public Accounts, after receiving notice from the Internal Revenue Service that a non-profit corporation's exempt federal income tax status has been withdrawn, shall convey such notice to the tax assessor-collector of each taxing unit in which property of the respective non-profit corporation is located. "

House Bill 1165 is quite similar in its purpose to House Bill 361 adopted by the 63rd Legislature which added a Section 27 to Article 7150 to provide for the tax exemption of property owned by non-profit corporations organized for the purpose of providing homes for elderly persons, etc. House Bill 361 was the subject of our Letter Advisory No. 48 issued earlier this year, in which we expressed the opinion that an institution for the care of elderly persons, to be exempt from taxation, would have to qualify as a "purely public charity" under the language of Section 2(a) of Article 8 of the Constitution of Texas and that any attempt to exempt such institutions from taxation by other means would be null and void.

In City of Amarillo v. Amarillo Lodge No. 731, A. F. & AM, 488 S. W. 2d 69 (Tex. 1972) the Supreme Court in discussing this exemption of a "purely public charity" said:

"The characteristics of an institution of purely public charity have been considered in several other cases. While the benevolent ends sought to be accomplished may take some form other than almsgiving, it is essential that the organization assume, to a material extent, that which otherwise might become the obligation or duty of the community of the state. It is also essential that the institution be organized and operated exclusively for purposes of public charity. The fact that it performs some charitable acts or engages in some charitable activity is not enough to qualify it for the tax exemption authorized by Art. VIII, Sec. 2, of the Constitution.

. . .

"The exemption of an institution of purely public charity as such is not authorized by the constitutional provision in question. It is only property owned by such an institution and used exclusively for purely public charity that may qualify for the exemption . . . . The institution must be one of purely public charity in the purposes for which it is formed and in the means used to accomplish such purposes, and the property claimed to be exempt must be owned and used exclusively by the institution in furthering its charitable activities. . . ." (488 S. W. 2d at 71-72)

This office has had many occasions to write concerning what is and what is not a purely public charity with reference to the property of rest homes and homes for the elderly. Perhaps one of the most illustrative opinions is Attorney General Opinion No. WW-453 (1958) concerning a rest home in Taylor, Texas. In that opinion it was concluded that the property owned by the rest home was not exempt because it did not accept any resident on a strictly charity basis. Subsequently, the lodge decided that it would accept indigent occupants and, as a result, Attorney General Opinion No. WW-771 (1960) was issued holding that the home was entitled to the tax exemption as a purely public charity. Other opinions with extensive recitations of facts concerning the operation of homes and holding the home, in each instance, to be a purely public charity are Attorney General Opinions Nos. C-209 (1964), WW-1277 (1962); WW-1424 (1962); and WW-1427 (1962).

Sec. 2(a) of Article 8 of the Constitution is:

" . . . All occupation taxes shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax; but the legislature may, by general laws, exempt from taxation public property used for public purposes; actual places of religious worship, also any property owned by a church or by a strictly religious society for the exclusive use as a dwelling place for the ministry of such church or religious society, and which yields no revenue whatever to such church or religious society, pro-

vided that such exemption shall not extend to more property than is reasonably necessary for a dwelling place and in no event more than one acre of land; places of burial not held for private or corporate profit; all buildings used exclusively and owned by persons or associations of persons for school purposes and the necessary furniture of all schools and property used exclusively and reasonably necessary in conducting any association engaged in promoting the religious, educational and physical development of boys, girls, young men or young women operating under a State or National organization of like character; also the endowment funds of such institutions of learning and religion not used with a view to profit; and when the same are invested in bonds or mortgages, or in land or other property which has been and shall hereafter be bought in by such institutions under foreclosure sales made to satisfy or protect such bonds or mortgages, that such exemption of such land and property shall continue only for two years after the purchase of the same at such sale by such institutions and no longer, and institutions of purely public charity; and all laws exempting property from taxation other than the property mentioned in this Section shall be null and void. "

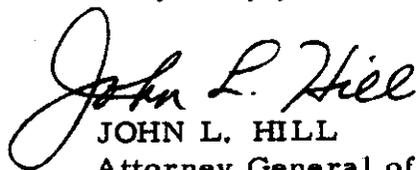
Because of its broadness, House Bill 1165 would authorize extension of tax exempt status to entities not allowed such status under the Constitution, we therefore believe it is unconstitutional.

Whether the Internal Revenue Service may have exempted an organization from Federal Income taxation as being a non-profit corporation would not be determinative of whether such organization has "purely public charity" status under the Texas Constitution. The test for status as a non-profit corporation is far different from and has no bearing upon the status as a purely public charity. However, it is constitutional for the Legislature to

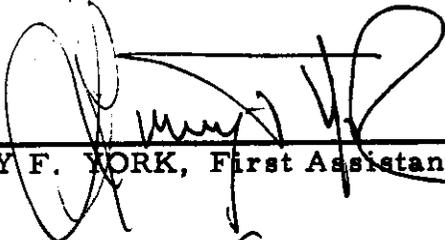
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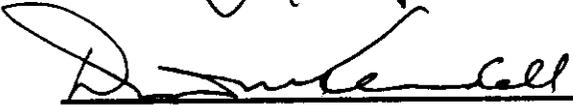
add to Section 24 of Art. 7150, as an additional condition to whatever tax exempt status Section 24 might confer, that the corporation have a current exemption from federal income tax.

Very truly yours,

  
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Attorney General of Texas

APPROVED:

  
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Opinion Committee