

Academic Component Institutions:  
The University of Texas at Arlington  
The University of Texas at Austin  
The University of Texas at Dallas  
The University of Texas at El Paso  
The University of Texas-Pan American  
The University of Texas-Pan American at Brownsville  
The University of Texas at Permian Basin  
The University of Texas at San Antonio  
The University of Texas Institute of Texan Cultures at San Antonio  
The University of Texas at Tyler



Health Component Institutions:  
The University of Texas Southwestern Medical Center at Dallas  
The University of Texas Medical Branch at Galveston  
The University of Texas Health Science Center at Houston  
The University of Texas Health Science Center at San Antonio  
The University of Texas M.D. Anderson Cancer Center  
The University of Texas Health Center at Tyler

THE UNIVERSITY OF TEXAS SYSTEM

Office of General Counsel

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Opinion Committee

August 4, 1993

RQ-593

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I.D.#

21621

Ray Farabee  
Vice Chancellor  
and General Counsel

The Honorable Dan Morales  
Attorney General of Texas  
Supreme Court Building  
P. O. Box 12548  
Austin, Texas 78711

Re: Request for Opinion on whether The M.D. Anderson Cancer Center Jesse Jones Rotary House International which is used for outpatient housing is exempt from all ad valorem taxes as provided under Section 11.11 of the Texas Tax Code.

Dear Honorable Morales:

On behalf of the Board of Regents of The University of Texas System (the "Board of Regents"), I respectfully request your official opinion on the following question:

*Does the M.D. Anderson Cancer Center Jesse H. Jones Rotary House International fall within the meaning of public property used for public purposes as defined under Section 11.11 of the Tax Code and therefore exempt from all ad valorem taxes?*

By letter dated March 25, 1993, the Board of Regents was advised by Jim Robinson, Chief Appraiser of the Harris County Appraisal District, that the Jesse H. Jones Rotary House International ("Rotary House") facility in Houston was no longer exempt from ad valorem taxation. That letter stated as follows:

I have reviewed the usage of the new Rotary House facility in Houston, and have concluded that the property is no longer eligible for exemption from ad valorem taxation under Texas Tax Code Sec. 11.11.

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Specifically, it is my determination that the operation of a hotel facility in conjunction with the M.D. Anderson Cancer Center does not constitute a public purpose within the meaning of the law.

In accordance with this determination, I have cancelled the tax exemption on this property as of January 1, 1993. If you disagree with the cancellation, you may file a written protest within 30 days of the date of this notice. Any protest should be mailed to the Harris County Appraisal District, Information & Assistance Division, P. O. Box 922004, Houston, Texas 77292-2004.

By letter dated April 14, 1993, the Board of Regents filed a written protest with the Harris County Appraisal District and requested a hearing. On July 14, 1993, an informal meeting was held with the Appraisal staff to discuss this matter. After the meeting, a decision was made that Attorney General's Opinion should be requested to resolve this issue.

#### POSITION OF PARTIES

The Appraisal District takes the position that the Jesse Jones Rotary House International is taxable under Section 11.11(e) of the *Tax Code* since these facilities are being used to provide private residence housing to members of the public.

The Board of Regents' position is that the Jesse Jones Rotary House International is public property used for public purposes as defined in Section 11.11(a) of the *Tax Code*, and thus exempt from all ad valorem taxes. The operation of the Rotary House is not the operation of a hotel facility as contended by the Harris County Appraisal District, but instead the facility is designed and used for that portion of the public seeking cancer treatment at the M.D. Anderson Cancer Center.

I would like to review the legal and historical concept of "public purpose" so that you may have a better understanding of the Board of Regents' position on this issue.

#### CONSTITUTION AND STATUTES

Article 8, Section 2(a) of the *Texas Constitution* provides in part as follows:

. . . The Legislature may, by general laws, exempt from taxation public property used for public purposes.

Article 11, Section 9 of the *Texas Constitution* also provides, in part, as follows:

. . . and all other property devoted exclusively to the use and benefit of the public shall be exempt from forced sale and from taxation, provided, nothing herein shall prevent the enforcement of the vendors lien, the mechanics or builders lien, or other liens now existing.

Pursuant to these Constitutional provisions, the Legislature passed Article 7150, *Vernon's Annotated Civil Statutes*, Section 4 thereof, which provides that "all property, whether real or personal, belonging exclusively to the state or any political subdivision thereof" shall be exempt from taxation.

Article 7150 is now codified as Section 11.11 of the *Tax Code* and reads, in part, as follows:

(a) Except as provided by Subsections (b) and (c) of this section, property owned by this state or a political subdivision of this state is exempt from taxation if the property is used for public purposes.

(b) Land owned by the Permanent University Fund is taxable for county purposes. . . .

(c) Agricultural or grazing land owned by a county for the benefit of public schools under Article VII, Section 6 of the *Texas Constitution* is taxable for all purposes. . . .

(d) Property owned by the state that is not used for public purposes is taxable. . . . .

(e) It is provided, however, that property that is held or dedicated for the support, maintenance, or benefit of an institution of higher education as defined in Chapter 61, *Texas Education Code*, but is not rented or leased for compensation to a private business enterprise to be used by it for a purpose not related to the performance of the duties and functions of the state or institution or is not rented or leased to provide private residential housing to members of the public other than students and employees of the state or institution is not taxable.

There are two requirements set out in the *Texas Constitution* that must be met before property is exempt from taxation. The requirements are that the property must be public property and that the property must be used for "public purposes."

### PUBLIC PROPERTY

It is undisputed that the lands and improvements which are the subject of this opinion request qualifies as public property as required by the Constitution and the *Tax Code*.

The acreage where the the Rotary House is located is property belonging to the Board of Regents of The University of Texas System, and thus is state property. *Splawn vs. Woodard*, 287 S.W. 677 (Tex.Civ.App.--Austin 1926, no writ); *Walsh vs. University of Texas*, 169 S.W.2d 993 (Tex.Civ.App.--El paso 1942, writ refd).

Since the Rotary House is state property, it clearly meets the first Constitutional requirement.

### PROPERTY USED FOR PUBLIC PURPOSES

The Court, as well as the Attorney General's Office, has established standards as to public purposes. In *A&M Consolidation Independent School District vs. City of Bryan*, 184 S.W.2d 914, the Supreme Court stated as follows:

In determining whether or not public property is used for a public purpose, the test appears to be whether it is used primarily for the health, comfort and welfare of the public. *Commonwealth vs. City of Covington*, 128 Ky. 36, 107 S.W. 231; 14 L.R.A., N.S., 1214; *Galveston Wharf Co. vs. City of Galveston*, 63 Tex. 14. It is not essential that it be used for governmental purposes. *Corporation of San Felipe de Austin vs. State*, 111 Tex. 108, 229 S.W. 845. It is sufficient if it be property which all of the public has a right to use under proper regulations. (Emphasis added).

The standard established in the *A&M Consolidation* case is applicable today in determining property used for a public purpose. See Attorney General's Opinion JM-405. In that opinion, it was held that a hospital district which received remuneration for leasing a building owned by the district would not lose its exempt status on such property.

The case law and the various Attorney General's opinions state that the determination of whether property is used for a public purpose is a fact question to be decided on each individual case. In order to have a complete understanding of all the historical facts leading up to the establishment of the Rotary House, I would like to review briefly the legislative enactments that established the M.D. Anderson Cancer Center.

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The M.D. Anderson Cancer Center was established in the Fall of 1941 by the passage of H.B. 268 (*attached hereto as Exhibit 1*). The caption of that bill provides, in part, as follows:

An Act to provide for the establishment of a State Cancer Hospital and the Division of Cancer Research, the location, control and management to be under the supervision of The University of Texas; providing for the selection of a superintendent and prescribing his qualifications and duties; providing for employment of a medical staff by the Board of Regents on recommendation of the superintendent and for their discharge; . . .

Section 1 of H.B. 268 provides:

There are hereby established the Texas State Cancer Hospital and the Division of Cancer Research, which institutions, together with such substations as may be created pursuant hereto, shall be under the control and management of The University of Texas, which shall determine the location within this State of said Texas State Cancer Hospital, said Division of Cancer Research and such substations, and which shall have charge of all building plans, materials, furnishings, equipment and other properties of or pertaining to said institutions or substations.

Section 6 of H. B. 268 sets out patient requirements prior to admission to the State Cancer Hospital. Section 14 of the bill sets out the necessity of establishing a State Cancer Hospital. That section described the need for cancer treatment in 1941:

The facts that cancer is causing four thousand (4,000) deaths annually in Texas, that many of the persons so afflicted are indigent persons, that there is no adequate provision made in this State for the study of the cause, prevention or cure of cancer, and that there are no State institutions devoted thereto, create an emergency and an imperative public necessity demanding that the Constitutional Rule requiring bills to be read on three several days in each House be, and the same is hereby, suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The current legislative enactment governing The University of Texas M.D. Anderson Cancer Center is now found in Section 73.101 of the *Texas Education Code*.

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Section 73.102 of the *Code* states that the institution and its substations shall be devoted to the diagnosis, teaching, study, prevention and treatment of neoplastic and allied diseases.

Section 73.105 of the *Code* provides that the Board of Regents may establish and maintain diagnostic and treatment substations as deemed expedient from time to time.

Section 73.108 of the *Code* sets out the patients' admission requirements.

The undisputed facts as set out in Michael J. Best Comments and the brochures enclosed as Exhibit 2 will abundantly show that the Rotary House is used primarily for the health, comfort and welfare of the patients receiving treatment at the M.D. Anderson Cancer Center. This information will show that approximately 97.69% of the guests staying at the Rotary House are patients and their families. The other guests are persons connected with The University of Texas System.

Much of the cancer treatment utilized by the medical profession now consists of outpatient treatment which reduces the cost to both the patient and the hospital. Instead of building additional hospital rooms, it was determined that outpatient treatment could be utilized and thus reduce hospital construction costs, as well as overhead expenses incurred with the general expenses of hospital operations. The facilities used for treatment of outpatients must be considered as used primarily for the health, comfort and welfare of the public. The information provided in Exhibit 3 shows that the costs per day for a private hospital room at M.D. Anderson Cancer Center is \$385 as opposed to the charge of \$65 to \$85 per day for room facilities in the Rotary House. Reducing medical expenses to the cancer patients by the use of outpatient facilities certainly falls within the Court's definition of "used for the health, comfort and welfare of the public."

Although Texas courts have not addressed a case on point, in 1986, the Minnesota Supreme Court ruled on a situation that is very similar to that of the Rotary House. See *Abbott-Northwestern Hospital, Inc. vs. County of Hennepin*, 389 N.W.2d 916 (Minn. 1986), attached as Exhibit 4. In *Abbott-Northwestern*, the Minnesota Tax Court held, and the Minnesota Supreme Court affirmed, that a facility much like the Rotary House was exempt from ad valorem taxes; the Court stated that the "facility was reasonably necessary in this modern age for the accomplishment of its purpose of furnishing health care services to patients."

The *Abbott-Northwestern* facility served preadmission patients, outpatients, medical personnel attending medical seminars offered by the hospital and family members of patients. The Minnesota facility had many features not typically found in ordinary hotels,

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such as total accessibility to disabled persons and wheelchair patients, coin-operated laundry facilities, kitchenette and lounge facilities in each room, and ready availability of medical care at the hospital. All of these features are found at Rotary House. Noting that almost 93% of the facility's occupants were patients and family members, the Minnesota Supreme Court recognized the major role that family members play in patients' treatment and recovery. Like the Minnesota facility, the Rotary House occupancy is almost exclusively patients and family members; current figures show that over 97% of our guests are in this category. Indeed, Rotary House guest reservation forms reference each patient's hospital number as part of the registration process.

As previously stated, the Rotary House should not be considered as a "hotel" as that word is traditionally understood. The information furnished to you will show that the rooms located within this outpatient facility are constructed to serve as an extension of the medical services that are available in the main treatment center of M.D. Anderson Cancer Center.

The Rotary House was constructed on lands owned by the Board of Regents and built from gifts of \$8 million from the Rotary Club of Houston and the Houston Foundation. The Board of Regents issued \$9 million in revenue bonds. The Rotary House is operated under a management contract with Marriott Hotel. All income derived from the outpatient housing is used to fund the M.D. Anderson Cancer Center's operations.

#### FEDERAL TAX EXEMPTION

Attached hereto, as Exhibit 3, is a legal memorandum which states that the income derived from the Rotary House should be considered as related business income, and therefore, under the *Internal Revenue Code*, not taxable as income to the M.D. Anderson Cancer Center. This memorandum states that operation of the Rotary House is related to the exempt purpose of the Cancer Center, as follows:

In ruling that the above activities are related to the exempt purpose of a hospital, the I.R.S. focused on the purpose of a hospital to provide health care for members of the community. By providing facilities for services to improve the physical comfort and mental well-being of the patients, a hospital is carrying on an activity that encourages recovery and therefore contributes importantly to a hospital's exempt purpose. More specifically, visitation of patients constitutes supportive therapy that assists in patient treatment and encourages recovery. By allowing visitors to use the facilities, a hospital encourages them to spend more time with patients.

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PRIVATE RESIDENCE

As previously stated, the Harris County Appraisal District contends that the Rotary House facilities is public property and is leased to provide private residential housing to members of the public. This is an untenable position. A person staying at the Rotary House facilities is an outpatient of the M.D. Anderson Cancer Center. This person is a transient guest of the Rotary House facilities for the sole purpose of receiving outpatient cancer treatment.

CONCLUSION

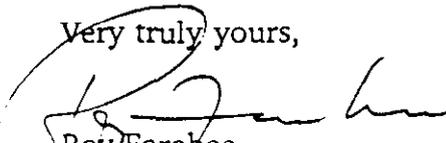
There can be no dispute that the Jesse H. Jones Rotary House is a state-owned and operated state facility and is used for the health, comfort and welfare of the public. It is the position of the Board of Regents of The University of Texas System that the Rotary House should be exempt from all ad valorem taxes and that it would be contrary to public policy and the Constitution and laws of the State of Texas to tax one state agency for the benefit of other state political subdivisions.

It is the position of Board of Regents of The University of Texas System that the Rotary House is a facility owned by the State and is used for public purposes.

- The Legislature has enacted legislation for the establishment of a cancer center for treatment of the general public.
- M.D. Anderson Cancer Center has been established to carry out this legislative enactment, and the Rotary House was constructed to assist M.D. Anderson Cancer Center in fulfilling this legislative mandate.
- The Rotary House should be exempt from the ad valorem tax rolls of Harris County, Texas, because of the provisions of the Texas Constitution and laws of the State of Texas.

Your consideration of the above legal analysis in providing the requested opinion is appreciated.

Very truly yours,

  
Ray Farabee

RF:gh  
Enclosures