

OFFICIAL OPINION NO. 86-44, Tax exempt status of a private association

November 13, 1986

Mr. David M. Buechler
Turner County State's Attorney
Box 578
Parker, South Dakota 57053

OFFICIAL OPINION NO. 86-44

Tax exempt status of a private association

Dear Mr. Buechler:

You have requested an official opinion on the following factual situation:

FACTS:

In 1985, Pioneer Memorial Hospital and Home (a nonprofit entity) of Viborg, South Dakota, constructed clinic facilities which are attached to the Hospital. The Board of Director of the Hospital and Home then leased the clinic facilities to Viborg Medical Clinic, Ltd., (a profit entity) for an amount sufficient to retire the debt incurred in construction. Viborg Medical Clinic, Ltd., provides receiving areas for two doctors. The chief purpose of the clinic is outpatient medical care. In addition, the Board has leased the basement to an optometrist. Moreover, the Hospital and Home has constructed a fourteen unit apartment complex for semi-independent living for a rental charge. The Board's position is that all of the aforesaid property is tax-exempt under the belief that the property is rented or used for a purpose within the scope of the objectives of the Hospital and Home. In other words, the Board maintains that the clinic and apartment complex are a part of the spectrum of providing health care to the residents of this area and it has not . . . rented, or used (this clinic and apartment complex) for purposes other than the object for which such society or institution was primarily organized.

Concerning this you have asked the following question:

QUESTION:

Does the property in question fall under the tax exemption status as described in SDCL 10-4-12?

The particular section you inquire about is only one portion of the entire spectrum so far as exemption from ad valorem tax on real property in South Dakota. The law as most recently enacted in 1986 describes a number of types of property which, depending upon the circumstances of their use, may or may not be exempt from taxation. The main statute concerning this is found at § 10-4-9.3 which relates to the property of nonprofit corporations used primarily for health care and related purposes. Under this section if property is owned by a corporation or society and used primarily for human health care and health related purposes it is exempt from taxation. However, one of the provisos is that the organization may not have any of its assets available to any private interest. While there are other requirements I do not believe they are particularly appropriate in view of the facts as you have presented them that the Pioneer Memorial Hospital and Home are not themselves making use of the property in question but rather have rented out for private gain the clinic as well as the fourteen unit apartment complex. While you may consider it a part of the spectrum of providing health care in a broad sense, there is not much that relates to human beings and their welfare that would not come under this category were statutes such as this to be loosely interpreted. As you know, however, the general requirement in South Dakota is that specific exemptions from a tax will be construed in favor of the taxing power. Application of Veith, 261 N.W.2d 424 (S.D. 1978); In Re Jackpine Gypsies, ---- N.W.2d ---- (S.D. 1986).

If the clinic were a tax exempt organization or the apartment complex was tax exempt then we might have the situation that existed in Official Opinion 69-13 wherein it was held that property owned by a tax exempt organization and leased to another tax exempt organization having similar objectives remains exempt.

It is generally held where property is owned by an exempt society but that property is rented out for profit, although the profits may be devoted to the purposes of the society, the property nevertheless is taxable. See South Dakota State Medical Association v. Jones, 82 S.D. 374, 146 N.W.2d 725 (1966); 1951-52 AGR 100; 1955-56 AGR 347, and to some extent see also 1947-48 AGR 293 and Opinion 80-16.

For all of these reasons, it is my opinion that the property you have described does not become exempt under the laws of South Dakota but should be assessed as provided in SDCL 10-4-12--that is on such portion of the property as is occupied or rented by the clinic or apartments.

Respectfully submitted,

Mark V. Meierhenry
Attorney General