

stories and to make it large enough to accomodate further need until probable expansion of the hospital. For a few years, one or possibly two, stories of the building will be available for rent.

"The trust is irrevocable, title to the property and all authority of operation is and will be in the trustee, all income from rents and otherwise will go to the trust and be used in the operation of the hospital. It is understood the hospital will not be self-supporting, it will be operated by the trust fund, the income from pay patients, supplemented with income from investments by the trust. Arrangement will be made to provide hospitalization, medical and surgical facilities, insofar as the trust is capable of extending same to patients who are unable to pay, it is contemplated of course as to charitable patients that the patients of this community and section will be given preference.

"With this statement of the conditions existing and contemplated the following question is state: 'Will the hospital property, when erected and operating on the basis above mentioned, renting a minor portion of the building for a time, but with all rents going to the hospital and used for the purposes above mentioned, be tax exempt under the provisions of subdivision 7, of Article 7150, Revised Texas Statutes, and other provisions of the Constitution and Statutes of the State."

"Referring to your letter of January 30th, 1946 in connection with the proposed Peterson Charitable Hospital, I am enclosing herewith a copy of the charter, which I believe you will find furnishes all the desired information.

"Also, I take this opportunity to correct a statement in my previous letter of the conditions contemplated. My original letter of January 25, 1946 mentions that a minor part of the hospital is to be rented. I was in error in stating that it would at first be a minor part. I believe a four story building is contemplated, with two upper stories for the hospital and two lower floors to rent. The building will, of course, be under the management of the trustees, and when it is found necessary the additional space will, of course, be utilized by the hospital. "

The purpose for which said corporation was incorporated does not govern the matter of tax exemption of its property, but it is rather the use thereof.

In the case of *City of Longview v. Markham-McRee Memorial Hospital*, 152 S.W. 2d 1112, in the opinion of Judge German, Commissioner, adopted by the Supreme Court, the Court said:

"Defendant corporation is admittedly a charitable institution, and is engaged in the operation of the hospital in question as a charitable enterprise. It is clearly such an institution as comes within the provisions of Section 2 of Article 8 of the Vernon's Ann. St. Constitution. The application of that provision of the Constitution is involved here. For purpose of clear understanding, that constitutional provision has been paraphrased by the Supreme Court, *Santa Rosa Infirmary v. City of San Antonio*, 259 S.W. 926, 930, in this language: "' * * * But the Legislature may, by general laws, exempt from taxation * * * all buildings used exclusively and owned by * * * institutions of purely public charity.'" *Morris v. Masons*, 68 Tex. 698, 5 S.W. 519; *City of Houston v. Benevolent Ass'n*, 111 Tex. 191, 230 S.W. 978.

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" . . . the Constitution requires the property, as a prerequisite to its right to exemption, to be exclusively used by the charitable institution, it is apparent, if any part of it is rented out and the relation of landlord and tenant created, that very fact would necessarily destroy the exclusive use necessary to be retained by the owner to bring its property within the plain terms of the Constitution, and it has been therefore held, as it was in that case, and in *State v. Settegast* (Tex. Com. App.) 254 S.W. 925, that the leasing of all or any part of a charitable institution's property to those not themselves engaged in a wholly charitable work, or the occupancy of even a part of the property by others under what amounts to an equivalent situation * * *, destroys the exempt character of the property, and it is plain that in those cases there could have been no other holding.

"The constitutional requirement is two-fold; the property must be owned by the organization claiming the exemption; it must be exclusively used by the organization, as distinguished from a partial use by it and a partial use by others, whether the others pay rent or not."

"These quotations reflect the consistent holdings of our courts. *Morris v. Masons*, 68 Tex. 698, 703, 5 S.W. 519; *City of Houston v. Scottish Rite*

Ass'n, 111 Tex. 191, 230 S.W. 978; State v. Settegast, Tex. Com. App., 254 S.W. 925; Benevolent & Protective Order of Elks Lodge v. City of Houston, Tex. Civ. App., 44 S.W. 2d 488, writ refused."

Also see the case of Markham v. City of Longview, et al, 191 S.W. 2d 695, error refused.

In view of the above authorities and the facts stated in your request it is the opinion of this department that the hospital property, when erected and operating on the basis above mentioned, will not be tax exempt.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Jos. V. Frnka
Jos. V. Frnka
Assistant

JVF:AMM:wc

APPROVED MAR 22, 1946
s/Grover Sellers
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman