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June 6, 1952
Op. No. 52-173

Mr. F. Lewis Ingraham
Yuma County Attorney
Courthouse
Yuma, Arizona

Dear Mr. Ingraham:

We acknowledge your letter of June 5, 1952, requesting an opinion from this office on the following question:

"Francis Johnson, operator of the Desert Lawn Memorial Park Cemetery in Yuma, through his Attorney James B. Rollo, Jr., desired an opinion as to the exemption on real property tax for the cemetery. In this case, as I understand it, the Desert Lawn Memorial Park is a Corporation which sells burial plots and is under the duty of maintaining a burial area forever. Apparently under 73-201, such an area of burial plots would be exempt from taxation if they were not held for profit as indicated by decisions in 122 ALR 901. However, after checking the Arizona Constitution, Article 9, Section 2, it was my opinion that such burial property would not be exempt unless it was the property of an educational, charitable or religious association not used or held for profit."

The question you wish answered is whether or not the Desert Lawn Memorial Park Association, Inc., of Yuma is exempt from taxation under Article 9, Paragraph 2, of the Constitution of the State of Arizona and Section 73-201,

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ACA 1939. Article 9, Section 2, of the Constitution of Arizona entitled "Tax Exemption" reads as follows:

"That there shall be exempt from taxation all federal, state, county and municipal property. Property of educational, charitable and religious association or institutions not used or held for profit may be exempt from taxation by law. * * *"
(Emphasis supplied)

Following the mandate of the Constitution, the Legislature enacted Section 73-201, ACA 1939, which insofar as material to your question reads as follows:

"3. Hospitals, asylums, poor houses, and other charitable institutions for the relief of the indigent or afflicted, and the lands thereto appurtenant, with their fixtures and equipments, not used or held for profit; grounds and buildings belonging to agricultural societies, so long as the same shall be used for those purposes only, and not used or held for profit; churches and other buildings used for religious worship, with their furniture and equipments, and the land and improvements appurtenant thereto and used therewith, provided rent is not paid for such land or improvements, and so long as the property shall not be used or held for profit; cemeteries and graveyards set apart and used for interring the dead, except such portions thereof as are used or held for profit." (Emphasis supplied)

Cooley on Taxation, Volume 2, 4th Edition, Paragraph 690, reads as follows:

"Extent of exemptions in general. The extent of an exemption, conceding that some property of the taxpayer is exempt, depends primarily upon the terms of the governing statute. For instance,

the extent of the exemption often depends upon the use of such words as 'owned,' 'belonging to,' 'held,' 'occupied,' 'used,' 'exclusively used,' etc. Exemption statutes may be roughly classified as belonging to one of three groups, viz.: (1) those making ownership of the property by a certain institution or class of people the test; (2) those making the particular use of the property rather than the ownership the test; and (3) those making both ownership and use the test. * * * "

Under our Code provisions, the exemptions depend upon the title to the property being in the trustee of the institution and the use thereof.

In the case of Lois Grunow Memorial Clinic v. Oglesby, 42 Ariz. 98, 22 P. 2d 1076, our Supreme Court said:

" * * * The test is whether the property is used in an effort to derive profit though a profit may not be realized. * * * "

"No property is exempt from taxation unless made so designedly and unequivocally by the legislature."
Waller v. Hughes, 2 Ariz. 114, 11 Pac. 122.

In the above cited case, the Supreme Court further said:

" * * * It is obvious to us that in the constitutional provision above quoted the word 'institution' applies to the established society itself and not to the buildings owned or occupied by the organization. If this were not true, it would be superfluous to use the words 'property of... institutions.' When, however, we come to the statute which actually specifies what exemptions

are granted, it will be noted the exemption is not of all property belonging to certain owners, or even to all property belonging to such owners which is not used or held for profit. The exemption specifies, first, certain named institutions, to-wit, hospitals, asylums, and poor houses, and then adds 'other charitable institutions'; and limits particularly the purpose for which all these institutions are to be used as being 'for the relief of the indigent or afflicted,' and also exempts the 'land thereto appurtenant.' The words 'hospitals, asylums, poor houses,' certainly would ordinarily be held to apply to physical structures and not legal organizations. Further the use of the word 'appurtenant' in ordinary legal parlance generally presupposes not an individual or organization which own certain property, but the physical property itself. We think, therefore, that the 'charitable institutions' referred to in the subdivision of section 3066 (73-201, supra) above quoted are physical property or buildings, whose principal use is for the relief of the indigent or afflicted, when such property is not used or held for profit, and not the organizations themselves, even though charitable in their nature, which may or may not hold certain of their property as exempt."

In the case of Calhoun v. Flynn, 37 Ariz. 62, 289 Pac. 157, Pothast v. Maricopa County, 43 Ariz. 302, 30 Pac. 2d 840, our Supreme Court said:

"An exemption is an incident to ownership and it is incumbent on any person claiming that his property is exempt to show his status."

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The Desert Lawn Memorial Park Association, Inc., was incorporated on September 29, 1936, and provides that the general nature of business to be transacted is the right to buy and sell real estate, install and operate cemeteries, to conduct a memorial park business. It is clear from the Constitution and the provisions of Section 73-201, supra, that the general nature of the business of the Desert Lawn Memorial Park Association, Inc., does not bring it within the exemption statute.

Therefore, it is our opinion that the legislative intent was not to exempt burial property unless it was the property of an educational, charitable or religious association and not used or held for profit.

Trusting the above will be of some assistance to you, we are

Respectfully,

FRED O. WILSON
Attorney General

MAURICE BARTH
Assistant Attorney General

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