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December 2, 1988

The Honorable Mark W. Killian
Arizona State Representative
State Capitol - House Wing
Phoenix, Arizona 85007

Re: I88-122 (R87-179)

Dear Representative Killian:

You have asked whether it is within the power of the legislature to exempt from taxation property owned by hospitals which is not used or held for profit, pursuant to art. IX, § 2 of the Arizona Constitution. We conclude that it is not unconstitutional to exempt from taxation property not used for profit which is owned by hospitals.

You have also asked whether it is constitutional to give tax exempt status to non-profit (charitable) hospitals when they give no greater service, charitable, free-gratis or non-billed services than for-profit competitors. We conclude that it is not unconstitutional for the legislature to enact legislation which provides tax exempt status to property of non-profit institutions so long as the property is not used or held for a profit. It would also not be unconstitutional for the legislature to amend A.R.S. § 42-271(A) to eliminate or limit the tax exempt treatment of the property of non-profit hospitals and other charitable institutions.

Both the Arizona Constitution and Arizona Revised Statutes permit tax exempt treatment of property of certain associations and institutions when that property is not held or used for profit. Art. IX, § 2 of the Arizona Constitution provides in part:

Property of educational, charitable, and religious associations or institutions not used or held for profit may be exempt from taxation by law.

Emphasis added.

A.R.S. § 42-271(A) provides:

All property in the state shall be
subject to taxation, except:

. . . .

5. Hospitals and other charitable
institutions for relief of the indigent or
afflicted . . . not used or held for profit.

This section exempts property not used or held for profit which
is used for relief of the indigent or afflicted.

"[L]aws exempting property from taxation are to be
construed strictly. The presumption is against the exemption,
and every ambiguity in the statute will be construed against
it." Conrad v. County of Maricopa, 40 Ariz. 390, 393, 12 P.2d
613, 615 (1932). Moreover, the legislature is permitted under
the Arizona Constitution to exempt only such of the property of
"charitable . . . associations or institutions" as is not held
for profit. Ariz. Const., art. IX, § 2. "[T]he legislature
cannot grant more, but may give much less than the exemption
permitted by the constitution." 40 Ariz. at 393, 12 P.2d at 615.

The Arizona Supreme Court in Conrad upheld a tax
exemption of the property of charitable institutions "whose
principal use is for the relief of the indigent or afflicted,
when such property is not used or held for profit" 40
Ariz. at 394, 12 P.2d at 615. Moreover, in Memorial Hospital v.
Sparks, 9 Ariz. App. 478, 453 P.2d 989 (1969), the court
determined that apartments owned and operated by a non-profit
hospital, which apartments were provided at low rent to aged
persons in need of medical care, and which apartments were not
designed to make a profit, constituted property used by a
"charitable institution" for non-profit purposes within the
constitutional and statutory provisions granting property tax
exemptions. Thus, property of a hospital which is not used or
held for profit and is used for relief of the indigent or
afflicted is exempt from tax.

The Arizona Constitution requires both ownership and
use by a charitable institution in order to qualify for
exemption from taxation under art. IX, § 2. Kunes v. Samaritan
Health Service, 121 Ariz. 413, 416, 590 P.2d 1359, 1362 (1979).

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The Constitution excludes from exemption any property used or held for profit. Thus, the legislature may exempt from taxation property principally used for the indigent and afflicted, and not used for profit.

The Arizona Court of Appeals in Kunes v. Mesa Stake of Church of Jesus Christ of Latter-Day Saints, 17 Ariz. App. 451, 453, 498 P.2d 525, 527 (1972), held "that the use to which the property is put is the sole criterion upon which charitable exemptions are based . . .", and stated that

the use of proceeds or 'profits' from the operation conducted . . . on that property is not determinative The charitable use tax exemption depends solely upon the use made of the property.

17 Ariz. App. at 453, 498 P.2d at 527.

With respect to your second question, you asked us to review Utah County v. Intermountain Health Care, Inc., 709 P.2d 265 (Utah 1985). In that case, the Utah Supreme Court denied tax exempt treatment to property of a non-profit hospital. The court based its denial on a provision of the Utah Constitution which limits the charitable purpose exemption to property "used exclusively for either religious worship or charitable purposes" Utah Const. art. XIII, § 2 (emphasis added). See 709 P.2d 268, 269. The court's decision in Utah County is also based upon a provision of the Utah Constitution which provides:

All tangible property in the state, not exempt under the laws of the United States, or under this Constitution, shall be taxed

Utah Const. art. XIII, § 2 (emphasis added). See Utah County, 709 P.2d at 268. Arizona's Constitution does not contain provisions analogous to the Utah provisions strictly construed by the Utah Supreme Court in Utah County.

Moreover, the Arizona courts have not signalled any indication to deviate so substantially from traditional treatment of the property of charitable institutions as did the Utah Supreme Court in Utah County. In Verde Valley School v. County of Yavapai, 90 Ariz. 180, 182, 367 P.2d 223 (1961), the

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Arizona Supreme Court cautioned that the strict construction of tax exemptions should not be used by the courts to subvert an established policy of the state. Although in Verde Valley the policy at issue was the establishment of private educational institutions, this state's policy favoring the establishment of hospitals is no less established. See e.g., Memorial Hospital v. Sparks.

The Arizona Supreme Court has stated that only the legislature may classify, and the classification "must rest upon some ground of difference having a fair and substantial relation to the object of the legislation." Apache County v. Atchinson, Topeka and Santa Fe Ry., 106 Ariz. 356, 361, 362, 476 P.2d 657, 663-664 (1970), citing Allied Stores of Ohio, Inc. v. Bowers, 358 U.S. 526 - 528 (1959). Thus, as long as the legislature recognized a distinction in the classifications of non-profit and for-profit hospitals, and the classification is not so disparate as to be arbitrary, then the classifications are not unconstitutional.

In summary, it is within the power of the legislature to exempt property not used for profit which is owned by a non-profit hospital, but it is also within the power of the legislature to eliminate or limit that exemption. Further, it is not unconstitutional to exempt such property so long as the classification is reasonable and not arbitrary.

Sincerely,



BOB CORBIN
Attorney General

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