

Opinion No. 55-6267

August 30, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. H. Leslie Williams, Assistant District Attorney, Second Judicial District, Second Floor Court House, Albuquerque, New Mexico

You have requested our opinion as to the validity of tax exemptions granted to Hospital Service, Inc., and Surgical Service, Inc., by Sections 58-15-11 and 58-16-12, N.M.S.A., 1953 Compilation. These statutes purport to declare these corporations to be exempt from taxation as charitable and benevolent institutions. Exemption from taxation is governed by Article 8, Section 3 of the Constitution of New Mexico, the first paragraph of which provides as follows:

"The property of the United States, the state and all counties, towns, cities and school districts, and other municipal corporations, public libraries, community ditches and all laterals thereof, all church property, all property used for educational or charitable purposes, all cemeteries not used or held for private or corporate profit, and all bonds of the state of New Mexico, and of the counties, municipalities and districts thereof shall be exempt from taxation."

It is obvious that the Legislature may neither enlarge nor diminish the exemptions granted in and by this section. *Dillard v. New Mexico State Tax Commission*, 53 N.M. 12, 201 P. 2d 345. The question of whether or not the activities of these corporations and the use of their property comes within the constitutional exemption is one for court determination and is not a legislative matter.

This office has conferred with representatives of the corporations mentioned and has been furnished with information concerning the manner in which they operate. From the information furnished us, we are of the opinion that the organizations, while nonprofit, are in no sense of the word charitable. The organizations agree with this statement and advise that they have at no time claimed exemption because of any claimed charitable nature of their operations.

It is, therefore, the opinion of this office that the property of Hospital Service, Inc., and Surgical Service, Inc., is not exempt from ad valorem taxation inasmuch as those corporations do not use such property for charitable purposes.

By Walter R. Kegel

Assistant Attorney General