

Opinion No. 63-29

April 3, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr. Charles Brunacini Commissioner Bureau of Revenue Santa Fe, New Mexico

QUESTION

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Is St. John's College a "Charitable Organization" within the meaning of N.M.S.A., 72-16-5 (c) (1962 Special session supplement)?

CONCLUSION

Yes

OPINION

{*59} ANALYSIS

St. John's College is a non-profit, non-sectarian educational institution. It offers only a liberal arts education and has no graduate or professional schools.

The New Mexico branch intends to support itself by charging students \$ 2,500.00 per year for board, room and tuition. Only 20% of its students will pay the full tuition. Eighty per-cent of its students will be allowed to attend the school while paying only a part or none of the above mentioned fee. The College estimates that the cost of education per student per year in this area is \$ 3,200.00. The deficit which is caused by this cost factor is borne by public subscription. St. John's College {*60} has no capital stock and no one can receive any pecuniary gain from its operation.

The school makes no distinction as to race, color, or creed in the selection of its students. Any student who meets the school's academic requirements is eligible for enrollment.

In **Southern Methodist University v. Clayton**, 142 Texas 179, 176 S.W. 2d 749 (1943) the Supreme Court of Texas had the occasion to determine whether Southern Methodist University was a charitable organization. The court said that because the University was devoted to public education without private gain it was a charitable institution and that this was so even though it was controlled by a religious organization and required its students to pay tuition.

The two factors which the Texas Court used in making this determination must always be present when an educational institution to be is declared a "charitable organization". A charitable organization must be formed and used for public purposes and its operation must not be such that it results in private gain. See **Samuel Friedman Foundation v. U.S.**, 144 F. Supp. 74 (1956); see also **Kappa Kappa Gamma v. Tierney**, 37 N.M. 156, 20 P. 2d 267 (1933)

For the purposes of making a determination as to the charitable nature of an organization we believe that the characterization of the organization by the Federal Internal Revenue Service and its registration with the Corporation Commission should be given great weight.

Applying above mention criteria to St. John's College, it is apparent that it is a Charitable Organization within the meaning of N.M.S.A., 72-16-5 (1962 special session supplement).

To the extent that Bureau of Revenue Memorandum Opinion dated October 2, 1962 is in conflict with this opinion it is expressly overruled.

From: Joel M. Carson

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