

## **Opinion No. 68-103**

October 11, 1968

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Waldo Anton, Jr., Chief Budget-Financial Control Division Department of Finance & Administration State Capitol Santa Fe, New Mexico

### **QUESTION**

#### **FACTS**

Santa Fe Family Services, Incorporated, is a branch of the Santa Fe County Health Department. Its function is to provide a continuation of hospital service. Instead of keeping the patient in the hospital, the patient is released to go home thereby reducing the patients normal hospital expenses. Under this program, nurses and homemakers are sent into the home and the cost for this service is paid for by the patient, by his insurance company, by Medicare, by Medicaid, by the State Health and Social Services Department, and in some cases Family Services itself absorbs the costs of the care it provides. Ninety-three percent of the costs of this program are paid for by Medicare and Medicaid.

The employees of Santa Fe Family Services are all classified under the State Personnel Act and are members of the Public Employees Retirement Association. The fiscal agent for the services is the City of Santa Fe. The service is now incorporated as an affiliate of the Community Action Program.

#### **QUESTION**

Under the above factual situation, is the Santa Fe Family Service entitled to a Nontaxable Transaction Certificate?

#### **CONCLUSION**

See analysis.

### **OPINION**

#### **{\*163} ANALYSIS**

Nontaxable transaction certificates are provided for in Section 72-16A-13, N.M.S.A., 1953 Compilation of the Gross Receipts and Compensating Tax Act. Section 72-16A-13, supra, requires that when a transaction is a nontaxable transaction the buyer or lessee will provide a nontaxable transaction certificate to the seller or lessor. Nontaxable transaction certificates are obtained from the Bureau of Revenue. When a

seller or lessor accepts a nontaxable transaction certificate in good faith from the buyer or lessee, the properly executed certificate is conclusive evidence that the proceeds of the transaction are not includable in the seller's or lessor's gross receipts for purposes of taxation under the Gross Receipts and Compensation Tax Act. To be eligible for a nontaxable transaction certificate the buyer or lessee must qualify under one of the exemptions or deductions provided for by the Gross Receipts and Compensating Tax Act. We believe that one exemption and one deduction must be discussed in answering the question asked.

First of all, we find an exemption from the compensating tax for:

"the use of property by nonprofit schools, colleges, universities, hospitals, religious or charitable organizations in the conduct of their regular educational, hospital, religious or charitable functions. Section 72-16A-12C, N.M.S.A., 1953 Compilation."

There is a corollary deduction to this exemption and that deduction is found in Section 72-16A-14L of the Gross Receipts and Compensating Tax Act and provides that in computing the gross receipts tax due:

"Receipts from selling tangible personal property, other than metalliferous mineral ore, to nonprofit schools, colleges, universities, hospitals, religious or charitable organizations who employ the tangible personal property in the conduct of their regular educational, hospital, religious or charitable functions may be deducted from gross receipts."

If Santa Fe Family Services, Incorporated is to claim an exemption under Section 72-16A-12C, or if it is to claim that one who sells to this corporation is entitled to a tax deduction for the sale, it must be classified either as a "hospital" or a "charitable organization". It must be remembered in interpreting this exemption that it is presumed that the receipts of all persons engaging in business are subject to the gross receipts tax. See Section 72-16A-5, N.M.S.A., 1953 Compilation. With this in mind, we turn to the definitions of "hospital" and "charitable organization."

In ordinary accepted usage, a "hospital" is an institution for the reception and care of the sick, the injured or the infirm. 41 C.J.S. Hosp., [1, p. 331; **McNichols v. City & County of Denver ex rel Newton**, 120 Colo., 380, 209 P.2d 910 (1949); **McKinney v. American Sec. Life Ins. Co.**, 76 So.2d 630, 634 (La. App. 1955). While we do not believe that Santa Fe Family Services may be classified as a "hospital", we do note that this nonprofit corporation has most of the attributes of a hospital in that they provide care of the sick, the injured and the infirm. In fact, this nonprofit organization was formed to take the place of the services of a hospital for those patients who are able to live at home. We therefore believe it will be helpful to review the status of hospitals in determining whether Santa Fe Family Services is a "charitable organization".

{\*164} The word "hospital" in its popular usage ordinarily means a charitable institution. **In re Cohen's Estate**, 58 N.Y.S. 2d 924, 926, 927 (1945). The fact that fees are

charged by a hospital is not the controlling factor in determining whether it is a charity. It is only when a hospital is organized for a pecuniary profit that it ceases to be a charitable organization. **In re Cohen's Estate**, supra at 926; **Maretick v. South Chicago Community Hospital**, 297 Ill. App. 488, 17 N.E. 2d 1012 (1938). Furthermore, "charitable purposes" are not necessarily limited to free service to the poor. **People ex rel Doctors Hospital v. Sexton**, 267 App. Div. 736, 48 N.Y.S. 2d 201, 205 (1944); See also **Santa Fe Lodge No. 460 v. Employment Security Commission**, 49 N.M. 149, 156, 159 P.2d 312 (1945).

In **People v. Sexton**, supra, it was held that:

"Hospitals which are devoted to the care of the sick and injured, which aid in maintaining public health and which make valuable contributions to the advancement of medical science are rightly regarded as benevolent and charitable. A hospital association not conducted for profit which devotes all of its funds exclusively to the maintenance of the institution is a public charity and this is so irrespective of whether patients are required to pay for the services rendered.

In view of the above authorities, it is our opinion that since the service provided by Santa Fe Family Services are essentially the same as hospital services, Santa Fe Family Services must be classified as a charitable organization as that term is used in the Gross Receipts and Compensating Tax Act. This opinion is greatly influenced by a number of New Mexico Supreme Court decisions defining "charitable purpose" for purposes of exemption from ad valorem taxation under Article VIII. § 3 of the New Mexico Constitution.

In **Temple Lodge No. 6, A.F. & A.M. v. Tierney**, 37 N.M. 178, 20 P.2d 280 (1933), the New Mexico Supreme Court held that property owned by the Masonic Lodge was used for "charitable purposes". In **Albuquerque Lodge No. 461, B.P.O.E. v. Tierney**, 39 N.M. 135, 42 P.2d 206 (1935), the New Mexico Supreme Court held that property used for an Elks lodge was entitled to a tax exemption as used primarily for charitable purposes. See **Church of the Holy Faith v. State Tax Commission**, 39 N.M. 403, 48 P.2d 777 (1935) and **Mountain View Homes, Inc. v. State Tax Commission**, 77 N.M. 649, 427 P.2d 13 (1967) for contrary opinions.

Although we do not believe that the organizations involved in the above New Mexico Supreme Court decisions are necessarily "charitable organizations" for purposes of exemption from our Gross Receipts and Compensating Tax Act, we believe that these cases make it clear that Santa Fe Family Services must be classified as such an organization.

In the opinion request we are told that this problem arose when Santa Fe Family Services applied for a nontaxable transaction certificate so that they could use it for a lease purchase agreement. Section 72-16A-14L, supra, does not provide a deduction for the lease of tangible personal property and therefore Santa Fe Family Services could not use their nontaxable transaction certificate for this purpose.

By: Gary O'Dowd

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