

1975 S.C. Op. Atty. Gen. 224 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4162, 1975 WL 22457

Office of the Attorney General

State of South Carolina

Opinion No. 4162

October 22, 1975

***1 Deed conveying real property to the S. C. Department of Mental Health in satisfaction of debt owed the Department for patient care is not subject to documentary taxation.**

Clerk of Court
Allendale County

Real property is being conveyed to the South Carolina Department of Mental Health in satisfaction of a debt owed the Department for patient care. The property will be held by the Department for resale with the proceeds appropriated as provided by law. You request an opinion of whether the deed conveying such property is subject to documentary stamp taxation.

The tax is imposed by Section 65–689 of the Code and provided therein is an exemption for deeds that convey property to the State for ‘highway or other public purposes’. The question, therefore, is whether the property is conveyed for a public purpose when the same is held for resale. We do not find where this issue has been before the courts of this State, however, the same is treated differently in other states. *City of Paducah v. Commonwealth ex rel. Oates*, 297 Ky. 107, 178 S. W. 2d 982 (not public purpose). *State v. City of Houston*, 140 S. W. 2d 277 (a public purpose).

The policy of this State is that reimbursement shall be made for patient care rendered by the Department. (Section 32–1026, et seq.). It cannot be reasonable contended that such care and reimbursement are not for public purposes. In commenting upon the term ‘public use’ as related to the taking of property, our Court has stated:

‘The term ‘public use’ is such a flexible term that courts have avoided a positive definition lest it prove an embarrassment in subsequent cases and work a mischief in practical application. There is no arbitrary standard by which to determine whether the purpose to which property is appropriated possesses all elements of public utility. The meaning of the term is flexible, and is not to be confined to what may constitute a public use at any given time.’ *Gasque v. Town of Conway*, 194 S. C. 15, 8 S. E. 2d 871.

While there is no clear rule of whether property conveyed to a political entity for resale is property for ‘a public purpose’, the statute granting the exemption is subject to a liberal construction.

‘The general rule is that exemptions of private property are strictly construed, because in such cases taxation is the rule and exemption the exception; but exemptions of the property of municipal corporations are liberally construed, for exemptions of such property is the rule and taxation the exception. With us municipal corporations are merely agencies of the state for governmental purposes; and it has never been the policy of this state to tax its own agencies or instrumentalities of government. From which we conclude that the provision should be construed liberally in favor of the exemption claimed.’ *Town of Myrtle Beach v. Holliday*, 203 S. C. 25, 26 S. E. 2d 12.

The exemption is for the benefit of the State and it is therefore the opinion of this office that the deed is not subject to documentary taxation.

*2 Joe L. Allen, Jr.
Assistant Attorney General

1975 S.C. Op. Atty. Gen. 224 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4162, 1975 WL 22457

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.