

1974 S.C. Op. Atty. Gen. 125 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3756, 1974 WL 21271

Office of the Attorney General

State of South Carolina

Opinion No. 3756

April 22, 1974

*1 It is probable that legislation exempting property owned by an eleemosynary corporation in which the members are hospitals would be upheld by the courts under the provisions of Article 10, Section 1 of the South Carolina Constitution.

Honorable Jewel Baskin
Member
House of Representatives
The State House
Columbia, South Carolina 29211

Dear Mrs. Baskin:

This is in reply to your request for an opinion of this office on the question of whether the General Assembly has the authority to exempt from taxation property owned by a mutual eleemosynary corporation formed pursuant to Chapter 12, Title 12 of the 1962 Code of Laws, the purpose and function of which is to furnish linen services to the nonprofit hospitals which compose its mutual membership. The directors of the corporation are determined by its members and officers must be chosen from among the directors. The corporation furnishes services exclusively to its members under fifteen year, long-term contracts and operates on a nonprofit basis. On dissolution, the property of the corporation is to be distributed to its members.

The General Assembly has an inherent power to exempt property from taxation unless limited by the South Carolina Constitution. [Ellerbe v. David](#), 193 S. C. 332, 8 S. E. 2d 518. Article 10, Section 1 of the Constitution limits the authority of the General Assembly to exempt property by excepting from taxation 'such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes'. If an exemption serves one of the purposes enumerated above, it is not precluded by Article 10, Section 1.

An argument might be made that the exemption in question would serve a 'municipal purpose' in the broad meaning of that term. See [Duke Power Co. v. Bell](#), 156 S. C. 299, 152 S. E. 865 and [Byrd v. Blue Ridge Rural Electrical Cooperative, Inc.](#), 215 F. 2d 542, in which an exemption for an electric cooperative was upheld on the grounds that it served a public rather than private purpose and, therefore, a municipal purpose. See also [61A C.J.S., Municipal](#), p. 777, citing [Ellerbe v. David](#), supra. However, it will not be necessary to decide that question in that it appears that the exemption will serve a charitable purpose.

In construing the New York State exemption statute, it was held that charitable purposes are not limited to corporations granting free services to the poor, but that the term also includes other services performed by a hospital which are beneficial to the general public. See [64 C.J.S., Municipal Corporations, Section 2018](#), citing [Doctors Hospital v. Sexton](#), 48 N.Y.S. 2d 201; aff'd 64 N. E. 2d 273. See also a related opinion of this office dated November 30, 1970, 1969-70 OAG, No. 3047, p. 339.

The fact that the property in question will be held by the service corporation rather than by the member hospitals has given some concern. There are no South Carolina cases on point, nor have any been found in other jurisdictions. Nevertheless, the ownership, commitment and control of the corporation by the member hospitals make it probable, in our opinion, that the South Carolina courts would uphold the General Assembly's right to grant the exemption.

Very truly yours,

*2 John C. von Lehe
Assistant Attorney General

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