

1973 S.C. Op. Atty. Gen. 33 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3460, 1973 WL 20924

Office of the Attorney General

State of South Carolina

Opinion No. 3460

January 19, 1973

***1 1. The provisions of Section 65–1522(6.1) do not exempt from taxation the property of a corporation organized to provide recreational facilities.**

2. The real property of an orphanage is exempt from taxation by Article 10, Section 4 of the Constitution, provided, however, that the property is actually occupied by the orphanage.

Senator

District 17

Reference is made to your request for the opinion of this office of whether the property of the Wilson Rural Area Recreation Center, Incorporated, and of the Free Will Baptist Orphanage of South Carolina are subject to property taxation.

The Wilson Rural Recreation Center, Incorporated, was chartered under the provisions of Chapter 13.1 of the 1962 Code of Laws as amended and Section 12–784 of the Chapter provides:

‘No corporation organized under the provisions of this chapter shall be exempt from taxation by reason of any provision of this chapter.’

This statutory provision conforms to the text of the Consolidated Farmers Home Administration Act of 1961 to the effect that this property is subject to State and local taxation. (See [7 U.S.C.A. 1984](#)).

The property is therefore subject to taxation unless the provisions of Section 65–1522(6.1) exempts the same. That Section provides:

‘*Eleemosynary, etc., organizations in Clarendon County.*—Property, real, personal or leasehold, of any social, fraternal, charitable, religious educational or eleemosynary society, association, trust or corporation in Clarendon County not operated for profit, if the property and the proceeds therefrom be devoted to the social, fraternal, charitable, religious, educational or eleemosynary objects and purposes of such society, association, trust or corporation, shall be exempt from all county, municipal, school and special taxes.’

Under well settled rules of construction, this statute is subject to strict construction with doubt resolved in favor of the tax.

‘Constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of the taxpayer claiming the exemption. He must clearly bring himself within the constitutional or statutory language upon which he relies.’ [York County Fair Association v. South Carolina Tax Commission](#), 249 S. C. 337, 154 S. E. 2d 361; [Textile Hall Corporation v. Hill](#), 215 S. C. 262, 54 S. E. 2d 809.

Article II of the Articles of Incorporation of the Center provide that ‘the nature and business of the corporation and the objects and purposes for which it is organized are to provide * * * *recreational* facilities of all kinds.’ The primary purpose of the Center is thus to own or hold property for recreation and that term is defined as:

‘A recreating, refreshment of strength and spirits after toil, diversion or a mode of diversion; play.’ *Webster's New Collegiate Dictionary*. (See also 36A, Words and Phrases, Recreation, page 121, et seq.

*2 Under such circumstances, the Center is not primarily a social, fraternal, charitable, religious, educational or eleemosynary corporation, therefore, in the opinion of this office, its property is subject to taxation.

With reference to the real property of the Free Will Baptist Orphanage of South Carolina, the same is exempt from taxation provided the same is actually occupied by the Orphanage. Act 10, Section 4 of the Constitution provides in part:

‘There shall be exempt from taxation * * * the property (of) all charitable institutions in the nature of asylums for the infirm, deaf and dumb, blind, idiotic and indigent persons, except where the profits of such institution are applied to private uses; * *

* Provided that as to real estate this exemption shall not extend beyond the buildings and premises actually occupied by such * * * asylums * * *.’

For purposes of this opinion it is assumed that if there is profit the same is not applied to private use and we are further informed that the property in question is operated as a motel serving the public. Under such circumstances, the property is not ‘actually occupied by the Orphanage’ and is therefore subject to taxation. (See *Strong v. Sumter*, 185 S. C. 203, 193 S. E. 649, *Wofford College Trustees v. Spartanburg*, 201 S. C. 315, 23 S. E. 2d 9.

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