

Opinion No. 36

**Taxation—Exemption From Taxation—Hospital Association—
Non-Profit Association.**

Held: The determining factor in deciding if the property used by a Hospital Association is entitled to exemption from taxation as provided for in Article XII, Section 2 of the Montana Constitution and Section 1998, Revised Codes of Montana, 1935, is whether or not the dominant and substantial use of the property is for benevolent and non-profit purposes rather than to make a profit for the individuals who control the Hospital Association.

July 18th, 1949.

Mr. H. A. Simmons, Jr.,
County Attorney
Carbon County
Red Lodge, Montana

Dear Mr. Simmons:

You have requested my opinion upon the following question:

"Is the property used by the Adams Hospital Association entitled to tax exemption under Article XII, Section 2 of the Constitution of Montana, and Section 1998, Revised Code of Montana, 1935?"

The factual situation as you have presented it is that the County Assessor of Carbon County has insisted upon the right to assess the property used by the Adams Hospital Association. The Association is composed of three Doctors residing in Red Lodge, Montana. While the record title to the property in question is in the name of another party, for the past year the Adams Hospital Association has been operating the property under a contract of purchase. The Association was incorporated under the provisions of Chapter 42 of the Civil Code, Revised Codes of Montana, 1935, as amended by Chapter 283, Montana Session Laws of 1947. The foregoing sections provide for the incorporation of non-profit companies or associations, including religious, charitable, fraternal, benevolent and beneficial associations, and medical service, hospital service and other service associations.

Article XV of the Articles of Incorporation, in accordance with the provisions of Section 3 of Chapter 283, Montana Session Laws of 1947, states that the Adams Hospital Association "shall be one maintained strictly as a non-profit, charitable corporation."

Article XII, Section 2 of the Montana Constitution is as follows:

"The property of the United States, the State, Counties, cities, towns, school districts, municipal corporations, and public libraries shall be exempt from taxation; and **such other property as maybe used exclusively** for the agricultural and horticultural societies, for educational purposes, places for actual religious worship, **hospitals and places of burial not used or held for private or corporate profit**, institutions of purely public charity and evidences of debt secured by mortgages of record upon real or personal property in the State of Montana, **may be exempt from taxation.**" (Emphasis mine.)

Section 1998, Revised Codes of Montana, 1935, is as follows, in part:

"The property of the United States, the State, Counties, cities, towns, school districts, municipal corporations, public libraries, **such other property as is used exclusively** for agricultural and horticultural societies, for educational purposes, places of actual religious worship, **hospitals and places of burial not used or held for private or corporate profit**, and institutions of purely public charity . . . are exempt from taxation. . . ." (Emphasis mine.)

In the case of *Montana Catholic Missions v. County of Lewis and Clark*, 13 Mont. 559, 35 Pac. 2, the Montana Supreme Court pointed out that there were two distinct classes of property exempted by virtue of Article XII, Section 2, of the Montana Constitution, and Section 1998, Revised Codes of Montana, 1935. The one class to be absolutely exempt and the other class exempt only if used exclusively for the designated purposes. The Court held, at page 564 of the opinion, as follows:

" . . . So, with the Constitution and the Law together, we have this condition: Property of certain entities, as the State, cities, etc., is exempt; the property exclusively used for certain purposes is exempt. The property in question falls within the second class, as the plaintiff is not one of the institutions mentioned in the first class, as the State or a city, etc., but is an "institution of purely public charity." And, we find from the complaint, that the property is not used exclusively, or at all, by such "institution of purely public charity." The most that the complaint alleges is that the property is intended to be so used. Such intention is not sufficient to constitute the use contemplated by the Constitution and the Law."

It is evident from reading the above quoted portion of the decision and the Constitutional and Statutory provisions to which it pertains, that if the property of the Adams Hospital Association is to be exempted from taxation it must be used exclusively as a hospital and not held for private or corporate profit.

In applying the exemptions allowed by Article XII, Section 2 of the Montana Constitution and Section 1998, Revised Codes of Montana, 1935, to the factual situation described herein, the rules of construction set forth by the Supreme Court of Montana must be kept in mind. In the case of *Cruse v. Fischl*, 55 Mont. 258, 175 Pac. 878 the Court held as follows:

"Section 2 (of Article XII of the Constitution) thus expresses the entire will of the people with respect to the property absolutely exempt and the extent of Legislative power to create exemptions. Section 2499, Revised Codes, (now Sec. 1998, Revised Codes of Montana, 1935) is therefore to be construed strictly; that is to say, nothing is to be implied, for the legislation is as broad in its terms as the limitation permits, and in its enactment the lawmakers exhausted their power to relieve property from taxation."

In the case of *In Re Wilson's Estate*, 102 Mont. 173, 56 Pac. (2d) 733, the Court approved and adopted the following language from *Cruse v. Fischl*, supra:

"Taxation is the rule and exemption the exception. . . . The taxing power of the State is never presumed to be relinquished unless the intention to relinquish is expressed in clear and unambiguous terms. . . . Every claim for exemption . . . should be denied unless the exemption is granted so clearly as to leave no room for any fair doubt. . . ."

Since it appears that there is no question but that the property used by the Adams Hospital Association is used exclusively for hospital purposes, the only question remaining to be answered is whether or not the hospital is used for private or corporate profit.

In the case of *Bistline v. Basset*, 47 Idaho 66, 272 Pac. 696, 62 A.L.R., 323, the Supreme Court of Idaho considered the question of exempting the property of a hospital from taxation under a statute which read as follows:

"The following property is exempt from taxation: Hospitals, with their furniture and equipment, used for benevolent purposes, with the ground appurtenant thereto and used therewith, **from which no profit is derived.**" (Emphasis mine.)

In ruling that the property of the hospital in question was not tax exempt since profits were derived by the members of the corporation even though the hospital itself lost money, the Court said:

"The fact, if true, that no profit is made by Lynn Brothers' Benevolent Hospital, as such, is immaterial, if a profit be in fact derived. The exemption is lost if profit is derived from the hospital, whether the profit be derived by the association or corporation in which the title lies, or by others who may use its facilities for their own purposes. Such result may not be avoided by placing title in a corporation whose expressed object is to make no pecuniary profit. We do not mean, nor hold, that an incidental use of the hospital, as in the treatment of patients therein by visiting physicians, for compensation, is such use as to defeat the exemption. **But where a dominant and substantial use is pecuniary advantage to individuals who have the hospital under their management and control, it is not a use for benevolent purposes, or without profit, within the meaning of the statute.**" (Emphasis mine.)

In speaking of a Constitutional provision which stated that the property of hospitals used exclusively for a public purpose, shall be exempt from taxation, the Minnesota Supreme Court in the case of *State v. Browning*, 192 Minn. 25, 255 N.W. 254, held:

"We are inclined to the view that it was intended that a public hospital also should be operated for the benefit of the public in contradistinction to being operated for the benefit of a private individual, corporation, or group of individuals. So construed, operated for the benefit of the public means operated without an intent to make a private profit. It is not thereby meant that the institution must dispense charity or that it may not charge a fee for services rendered. Operated for the benefit of the public does not mean that the receipts shall be substantially more than the disbursements so that a profit results. Nor is it meant that a hospital is exempt for a particular year merely because there is no profit for that year. **The controlling feature is whether the institution was built, organized, and or is maintained with an intent to make a private profit not whether there happens to be a profit in any given year.**" (Emphasis mine.)

Following the reasoning of the above quoted decisions and applying a strict construction of the Montana exemption statute, it is apparent that the facts submitted by you are not sufficient for this office to determine whether or not the property used by the Adams Hospital Association is exempt from taxation. It is a question of fact as to the dominant and substantial use of the property. If such use is for pecuniary advantage to the individuals in control of the hospital then

the property is not exempt. On the other hand, if the dominant and substantial use is a non-profit hospital association, then the property is exempt as not being operated for "private or corporate profit" as set out in Section 1998, supra.

For the purposes of exemption it is not controlling that the articles of incorporation state that the association is a non-profit association. 51 Am. Jur., Taxation, Section 638, p. 608, states the rule as follows:

"In general, to be entitled to an exemption as a benevolent institution, it is not sufficient that the corporate articles of the hospital contain the recital that it was organized for benevolent purposes, but the hospital must be actually conducted for such purposes."

The fact that the property is only operated by the Adams Hospital Association under a contract of purchase will not defeat exemption of the property if it is otherwise exempt. In the second class of property provided for in Section 1998 supra, exemption is made contingent upon use of property and not ownership thereof, and the general rule is set forth in 61 C. J., Taxation, Sec. 598, p. 501, as follows:

"Where Constitution or Statute predicates exemption upon ownership of property of a charitable institution, hospital property owned by others will be denied exemption, and equitable ownership by such an institution has been held insufficient. Where, however, the statute, broadly exempts "hospitals" used for benevolent purposes, exemption depends solely upon use, irrespective of ownership or of the character of the owner."

Therefore, it is my opinion that whether or not the property used by the Adams Hospital Association is exempt from taxation cannot be decided without a determination as to dominant and substantial use of the property. If, as stated above, the hospital is maintained primarily to make a private or corporate profit for the individuals who control it, the exemption cannot be had. If the principle purpose is really for benevolent, non-profit purposes, then the exemption must follow as a matter of course.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.