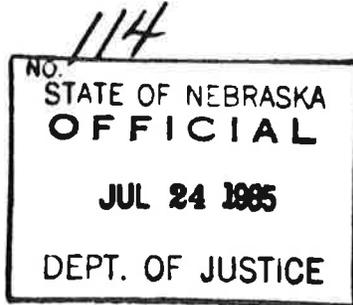


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



July 18, 1985

ROBERT M. SPIRE
Attorney General
A EUGENE CRUMP
Deputy Attorney General

SUBJECT: Tax exemption: exemption of property leased by charitable organization

REQUESTED BY: Brian C. Silverman, Scotts Bluff County Attorney, Gering, Nebraska

OPINION BY: Robert M. Spire, Attorney General
John Boehm, Assistant Attorney General

QUESTION: Whether personal property leased by a charitable institution and used in connection with its tax exempt purpose is exempt from property tax.

CONCLUSION: No.

A hospital, which is a charitable organization, has leased a computer for use in performing various functions related to its tax exempt purpose. Under the lease agreement the hospital has agreed to pay any taxes due on such property.

The Nebraska Constitution, Article VIII, Section 2, provides that, "The Legislature by general law may exempt . . . property owned and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not owned or used for financial gain or profit to either the owner or user." The Legislature has in turn enacted Neb.Rev.Stat. §77-202 (Reissue 1981) which provides in (1)(c) that the following property is exempt from taxes:

Property owned by educational, religious, charitable, or cemetery organizations and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not owned or used for financial gain or profit to either the owner or user; . . .

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In the first place, the leased property is obviously not owned by a charitable organization but rather by a business organization whose business activity involves the lease of such property for profit. While the equipment may be used for a charitable purpose by the hospital, this is not true as to the owner and lessor of the property which in turn owns and "uses" this property for the sole purpose of its financial gain or profit.

There are no Nebraska cases directly on point. However, exempt organizations which have leased their own property for nonexempt business purposes have been denied exemptions on such property. Y.M.C.A. of Omaha v. Douglas County, 60 Neb. 642, 83 N.W. 924 (1900); Young Men's Christian Association v. Lancaster County, 106 Neb. 105, 182 N.W. 593 (1921).

In the recent case of United Way v. Douglas County Board of Equalization, 215 Neb. 1, 337 N.W.2d 103 (1983), the court allowed an exemption on property owned by one charitable organization and leased to another charitable organization where the property was not used for financial gain or profit to either the owner or user. In so doing, the court stated as follows:

From the foregoing we deduce the rule to be that property is not used for financial gain or profit to either the owner or user if no part of the income from the property is distributed to the owner's or user's members, directors, or officers, or to private individuals.

Of course, the converse of that rule is true as well, and applicable here. The leased property is used for financial gain or profit to the owner since the income from the lease of the property is distributed to the owner's members, directors, or officers, or to private individuals. Thus, there is simply no basis for allowing an exemption on such leased property.

Very truly yours,

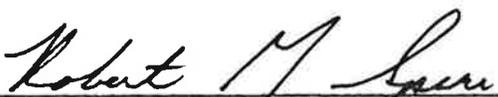
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APPROVED:


Attorney General