1983

R. Milton Yorgason, Salt Lake County Assessor v. County Board Of Equalization of Salt Lake County, Ex. Rel., Episcopal Management Corp : Brief of Appellant R. Milton Yorgason Salt Lake County Assessor : Brief of Appellant

IN THE SUPREME COURT OF THE STATE OF UTAH

R. MILTON YORGASON, Salt Lake County Assessor, Plaintiff, Appellant, vs. COUNTY BOARD OF EQUALIZATION OF SALT LAKE COUNTY, ex. rel., EPISCOPAL MANAGEMENT CORP., Defendant, Respondant.	)))))))	Case No. 18986

BRIEF OF APPELLANT
R. MILTON YORGASON
SALT LAKE COUNTY ASSESSOR

Appeal from Decision of
The Tax Division of the Third Judicial District Court
Honorable Judge Dean Conder, Presiding

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IN THE SUPREME COURT OF THE STATE OF UTAH

R. MILTON YORGASON,
Salt Lake County Assessor,

Plaintiff, Appellant,

vs.

COUNTY BOARD OF EQUALIZATION
OF SALT LAKE COUNTY, ex. rel.,
EPISCOPAL MANAGEMENT CORP.,

Defendant, Respondant.

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STATEMENT OF THE NATURE OF THE CASE

Consistent with the duties of his employment, the plaintiff Salt Lake County Assessor, caused the real property and improvements located at 650 South 3rd East, Salt Lake City, County of Salt Lake to be assessed and duly taxed. Episcopal Management Corporation, the owner of the property, sought review of the assessment to the Salt Lake County Board of Equalization claiming complete exemption from taxation on the basis of the charitable exemption found in Article 13, Section 2 of the Utah Constitution. The assessment having been vacated by the County Board of Equalization, the plaintiff Assessor, sought review from the Board's decision at the state administrative level

before the State Tax Commission of Utah, and later in the tax division of the Third District Court. The claimed exemption being upheld by the District Court, the plaintiff Assessor, now seeks the review by this Court of the lower Court's decision.

DISPOSITION IN THE LOWER COURT

The Tax Division of the Third Judicial District Court, the Honorable Judge Dean Conder presiding, dismissed the plaintiff's Writ of Review with prejudice, finding the property to be used exclusively for a charitable purpose and thereby exempt from taxation pursuant to Article XIII, Section two of the Utah Constitution and UCA Section 59-2-30, as amended 1953.

RELIEF SOUGHT ON APPEAL

Plaintiff/appellant seeks review and reversal of the lower Court's Judgment and prays that the case be remanded back to the District Court, with direction that said Court make and enter its judgment and decree to state that the defendant's use of the St. Marks Tower property is not exclusively for charitable purposes and that such property be placed upon the tax rolls of Salt Lake County, and that the same be duly assessed and taxed for tax years 1980 and following.

STATEMENT OF FACTS

The respondent, Episcopal Management, was organized as a nonprofit corporation in the State of Utah in April of 1978. (T.P. p34) The purpose of the Corporation is to aid the elderly and handicapped through the construction of housing for those people using all federal, state and private housing assistance which might be available. (T.R. p34) The Corporation was provided specific authority to do what was necessary in order to obtain federal monies under Section 202 of the National Housing Act of 1959. (T.R. p35)

The Board of Directors is authorized to have from five to nine members with the Bishop of the Episcopal Diocese of Utah being an unremovable Board member. (Article Seventh of the Corporate Articles as attached to the transcript of the hearing before the Utah State Tax Commission, such transcript being included in the trial record by stipulation of the parties, at T.R. p38)

The Corporate Articles cannot be amended without the consent of the Bishop of the Episcopal Diocese. (Article Thirteenth, Ibid) Upon dissolution of the Corporation, the net proceeds may be given to any organization operated for charitable, educational, religious or scientific purposes. (Article Twelfth, Ibid). After incorporation, the Management Corporation

applied and received a loan of $3,638,000.00 from the Secretary of Housing and Urban Development (HUD) secured by a forty year mortgage. (T.R. p37) With these funds in hand, the corporation acquired the subject land and built the housing project known as the St. Marks Tower consisting of 98 rental units, common areas and administrative office. (T.R. p36)

A Stipulation of Facts was entered by the parties. (T.R. p33-39) Among the uncontested facts were the following:

a) Both the mortgage and operating expenses of the Tower are sustained solely by rental revenue. (T.R. p38)

b) The rental amount is established on the basis of fair market value for equivalent facilities in the community as required by HUD regulations. (T.R. p37)

c) Of the current rental amount of $433.00 per month per unit, the tenant pays only one quarter of his or her gross earnings towards such housing and the federal government pays the balance. (T.R. p37)

d) To be eligible for these accommodations, the tenant cannot have annual earnings of more than $12,000.00, or $13,700.00 for a couple. (T. R. p37)

e) The tenant must be at least 62 years of age or handicapped, however no more than 10% of the tenants may fall within the handicapped classification. (T.R. p37)

Certain additional facts were learned at the administrative hearing before the Utah State Tax Commission. The Tower is only bound by law to provide a decent, safe and sanitary housing facility (testimony of Operations Director for the Tower, P 10, L 22-25, State Tax Commission transcript) Its management attempts through coordination of outside services to keep the tenant independent and away from the nursing home setting. It is not, however, a substitute for nursing home care (page 8-13, 53-54, State Tax Commission transcript).

There are no tenants living in the facility without charge.

The plaintiff/appellant levied the required property tax assessment on the Tower property believing the property's use not to be a truly charitable one as defined by Utah Constitution and Statute. (T.R. p47) The lower Court held against the Salt Lake County Assessor thereby concluding that the property is used exclusively for charitable purposes and therefore exempt from taxation. From this ruling, plaintiff appealed.

POINT I

SERVING A SOCIAL NEED BY PROVIDING LOW-INCOME HOUSING IS APART FROM AND DOES NOT CONSTITUTE A CHARITABLE PURPOSE AS DEFINED BY UTAH LAW.

The defendant/respondent has focused on national studies in an attempt to show Salt Lake County has a need for low-income housing. However, even assuming this County has a deficiency in low-cost housing for its elderly, an exclusive charitable use is not simply a finding that a social need is being served.

In Beerman Foundation Inc., v Board of Tax Appeals 87 N.E. 2d 474, 475 (Ohio 1949), a nonprofit foundation constructed apartments for occupancy by war veterans who had impaired earning power. The monthly rental was $35.00, however, the fair value of comparable units was $75.00. The Court found this amounted to a rent subsidy. The Court quoted the Appeals Board as saying:

> ..None are housed free of cost. If applicant's space were not available these eight tenants would presumably have to find less desirable quarters within their means. Is applicant's philanthropy in foregoing a profit the criterion?..

The Court later answers this question by stating:

> The use of the property in the instant case is primarily for furnishing low rent housing and not exclusively for charitable purposes.

The resulting tax exemption in finding an exclusively charitable purpose is the reason for differentiating a social from a charitable purpose. Only by a taxpayer taking upon its shoulders what the taxing entity presently carries or is ob-

ligated to assume, will the taxpayer be allowed to escape its share of taxes.

In United Presbyterian Association v Board of County Commissioners 448 P.2d 967, 975 (Colorado 1975), the Court dealt with the exemption status of a senior citizen's home. Finding against the charitable exemption the Court said,

> The justification for charitable tax exemption, especially insofar as the rights of the body politic are involved, is that if the charitable work were not being done by a private party, it would have to be undertaken at public expense.
>
> *****
>
> ..The furnishing of homes to older adults is not in itself a charitable purpose.

Here the defendant provides no real services which the County would otherwise have to provide. No justification therefore exists for granting the exemption.

The defendant has emphasized that it obtained the needed funding for the Tower from federal HUD monies and that the National Housing Act, which authorizes such funds, clearly sets forth the need for low-income housing. Yet the federal statutory provisions do not hinge any funding on the property being tax exempt from local taxation. Again, the social need and the tax exemption are based on different criteria. See 12 U.S.C.A. Section 1701 et seq.

In Paraclete Manor of Kansas City v State Tax Commission 447 S.W.2d 311, 312-315 (Missouri 1969), the plaintiff used the same federal funding as defendant in the present case. As in the instant case, the rents were geared to pay off the mortgage and ongoing expenses. Unlike the Tower, which gets what the market will allow,the rent was found to be $25.00-$30.00 less than comparable units in the community. Although the tenants were charged equally for the same kind of unit, many received other welfare or, as in the present case, supplements from the federal government. The Court ruled against the charitable exemption finding:

> ...that it was thus intended to be completely self-supporting and self-liquidating without any intention that gifts or charity were to be involved; [and] that it is thus actually competitive with landlords offering other residential property for rent on which taxes must be paid,...

The Paraclete Manor Court, the United Presbyterian Association case, and the earlier noted Beerman opinion all keep in tact those reasons for allowing a tax exemption. That being the act of giving which results in a displacement of government services and subsequent savings of public monies. The defendant here gives no gifts as part of its day-to-day operations and takes over no current County services. No reason therefore exists under existing tests for charitable tax exemptions to grant the property said exemption.

The defendant persuaded the lower Court that but for its housing facility, some of its tenants might be found in Utah nursing homes with Medicaid incurring the bill. (T.R. p60) Even if this were found to be more than mere speculation, it would not be pertinent in that Salt Lake County as an entity does not pay Medicaid. This Court has required the above mentioned quid pro quo relationship to exist in Salt Lake Lodge No. 85, B.P.O.E. v Groesbeck 40 Utah 1, 120P 192, 194 (1911). The present facts are void of any services being supplied by the defendant for which the plaintiff County would otherwise be obligated to pay. Since this case deals only with County property taxation, no exemption based on charity can be maintained because of the lack of displacement of local government responsibilities.

The plaintiff is not attempting to demean the useful service the defendant is supplying. As brought out in the hearing at the State Tax Commission, the defendant is making the lives of its tenants much more pleasant. However, the facts supporting a finding of charity just do not exist in this case.

POINT II

THE ACT OF MAKING A GIFT IS ESSENTIAL TO AN EXCLUSIVELY CHARITABLE PURPOSE AND DEFENDANT DOES NOT CONTRIBUTE ANYTHING TO ITS TENANTS.

Clearly, a finding of charity includes a finding of giving. In Salt Lake County v Tax Commission et al., 596 P2d 641, 643 (Utah 1979), the Court wrote,

> Charity is the contribution or dedication of something of value to the poor or at least to the common good... By exempting property used for charitable purposes, the constitutional convention sought to encourage individual or group sacrifice for the welfare of the community. An essential element of charity is giving. (emphasis added)

In the present facts, the defendant borrowed federal funds to build the Tower. The mortgage and day-to-day expenses are paid either by the tenant or the same federal funds as used to build the project. The Tower is managed by a private corporation which has the right to make a profit and claims no exemption. The would-be taxpayer as owner of the facility has contributed nothing of relative significance in alleviating the needs of our elderly, yet now claims a tax exemption on the basis of its charity.

The lower Court was convinced by the defendant that the source of the charitable gift is irrelevant. Thus by the federal government providing rent subsidies to keep the building running, the owner of the property was somehow masked with the charitable intent. It seems obvious that before a landowner deserves exemption status due to its charity, the landowner must be the source of the gift and the property must be used exclusively for the charitable purpose.

The element of personal sacrifice has long been a standing requirement to a finding of charity. In Friendsview Manor v State Tax Commission 420 P.2d 77, 80-81 (Oregon 1966), the Court had a similar set of facts before it. A retirement home was claiming exemption from real property taxation as a charitable institution. The property did not receive federal funds, but required a substantial founder's fee, monthly rental and received voluntary community gift support. The Court found the petitioner in a few instances did pay all or part of the founder's fee and monthly charges for persons unable to pay. The petitioner alleged that its charitable purpose is evidenced in its care of the elderly whether rich or poor. The Court held against the exemption. It found it essential that the property be donated by others and not purchased by the users of the property before a charitable exemption would be granted. Quoting an earlier case, the Court wrote,

> . . . that in order for the activities of a taxpayer to entitle him to exemption as "social welfare" work they must be calculated to benefit some other group than the one which supplies the money and directs its disposition...[I]n the benefaction some mode of altruism must clearly shine forth.(emphasis added)

The present facts hold not the tenant paying the large percentage of needed rental, but the federal government. Realistically the taxpayers of this Nation are the ones supplying the needed support. Public funds have never been considered

a charitable gift. The defendant, one who would be obligated to pay the property tax, has given nothing.

It should be remembered that the County as an independent taxing unit with its independent budget responsibilities is the one which will lose the tax revenue otherwise generated by defendant and others engaged in similar tasks. The taxpayers of this Nation are the only group having given anything in this case, and they have done so void of any altruistic intent. The defendant being exempt from federal income taxation is the only entity which has contributed nothing, but seeks an exemption based on its benevolence. This Court, along with other state courts, looks to the defendant taxpayer's charitable intent, the use of the property and the resulting displacement of government services. This defendant has made no significant gift of itself and assumes no County government responsibilities. The property is not used exclusively for charitable purposes.

The lower Court's ruling that the source of the necessary funding was irrelevant in determining the exclusive charitable character of the would-be taxpayer, is contrary to the mandate of this Court and others which require a charitable or benevolent intent be found to exist in the taxpayer and, an exclusively charitable use of the property. In County of Douglas v OFA Senior Citizen's Inc., 111 NW 2d 719, 725 (Nebraska 1961), the Nebraska Court was faced with similar facts

as this Court is presently. The building was used for low-income rental to the elderly on a nonprofit basis. Social programs were provided and the rental was based upon costs of upkeep and amortization of the mortgage. The residents were accepted without determining whether they could pay the rental or not and many were subsidized by receiving work and assistance in order that they could meet the rent. The tenants were required to pay the rental amount although inability to pay did not result in eviction. The rental, however, was never abated and outside sources were sought to pay the owed amounts. No specific rights were granted the tenants to remain in the facility without payment of the rental from some source. Again the exemption was rejected. The Court said,

> In this it is not difficult to perceive that the operations of the defendant included worthy charitable aspects but it may not well be said that this ownership and use was exclusively charitable...

The elements the Nebraska Court found to be controlling are clearly present here. The defendant bases its rental on the costs of maintaining the building and amortizing the mortgage. The tenants have no express rights which would prevent their eviction if the monthly rental could not be paid. If they were unable to pay their share of the rent, they could not reside at the facility. The Nebraska Court specifically

finds that rental payments by third parties is not sufficient to grant the landowner taxpayer charitable status. The promotion of the charitable intent being a significant element in the exemption status.

The defendant is improving the living conditions of some of the area elderly and plaintiff would not belittle that effort. But as shown above, the defendant as a taxpaying entity does not fulfill the elements of an exclusively charitable institution and the taxpayers of Salt Lake County should not shoulder the defendant's property tax responsibility.

POINT III

THE PARENT ENTITY OF THE DEFENDANT MAY WELL BENEFIT BY THE TOWER PROPERTY AND SUCH BENEFIT PREVENTS AN EXEMPTION BASED ON AN EXCLUSIVE CHARITABLE PURPOSE.

As noted in the Statement of Facts, the Bishop of the Episcopal Diocese of Utah is a permanent member of the defendant's Board of Directors. The Articles cannot be amended without his vote being amongst the majority. (Article Seven and Thirteen of the defendant's Articles of Incorporation) Upon dissolution of the Corporation, the net proceeds may go to any religious or charitable institution which obviously includes the Episcopal Church. (Article Twelve, Ibid)

Effectively, the Episcopal Church has built a 98 unit residential complex at no cost to itself. The complex is run at no cost to it and if it is later sold, the entire sales price will be a nontaxable gain. The Diocese has aided the area aged and can make a fantastic sum of money at the same time. Plaintiff does not attempt to place this possibility in an unfavorable light. However, the possibility of the benefit enuring to the Episcopal Church is real. Both social and religious needs can be benefitted. However, this outlook does prevent a tax exemption on the basis of an exclusive charitable purpose.

In Parker et al v Quinn 23 Utah 332, 64 P. 961, 962 (Utah 1901), the plaintiff as trustee held legal title to property for the benefit of the Fifteenth Ward Relief Society. The taxable property was a two-story building, the upper level used by the Relief Society for its exclusive charitable and religious work. The lower level was rented out and the proceeds contributed toward the furtherance of the charitable work. This Court found that property held by the Society as a source of income was not used for an exclusively charitable purpose, even though the income was put toward the charitable function.

The same result occurred in the Idaho case of Malad Second Ward of the Church of Jesus Christ of Latter-Day Saints v State Tax Commission 269 P.2d 1077, 1079 (1954). There, the

land of the plaintiff was used to raise wheat which was ultimately used in the Church's Welfare program. The Court held no charitable exemption existed under the facts. It said,

> Conceding the claimant to be organized as a charitable institution or society, it is not entitled to exemption from taxation on property which it owns and from which it derives a revenue, even if the funds or produce so derived are devoted exclusively to charitable purposes.

The defendant in the present case has yet to contribute the gain from the Tower to its parent Diocese. However, the established doctrine of strict construction has always pertained to tax exemptions. As the Parker Court stated, in cases on this subject, all doubts must be resolved against exemption. Therefore, the very real possibility of the Diocese retaining the large gain created by the Tower project, eliminates the Tower from obtaining exemption status based on an exclusive charitable purpose.

POINT IV

> THIS COURT HAS PREVIOUSLY HELD THAT HOUSING FACILITIES SUCH AS DEFENDANT'S DO NOT CONSTITUTE A USE FOR AN EXCLUSIVELY CHARITABLE PURPOSE.

The defendants in the lower Court attempted to differentiate itself from the Friendship Manor property. The elements

this Court focused on in Friendship Manor Corporation v Tax Commission 26 Utah 2d 227, 487 P.2d 1272, 1275-1280 (1971), in denying the tax exemption are equally present in this case.

The Friendship Manor opinion dealt with a nonprofit organization comprised of five religious denominations which had financed a high-rise residential complex through federal funds. The building was especially designed for elderly persons and social programs were amply provided. The tenants had to be able to physically take care of themselves and the management required the tenants pay for what they received. The rental for the units was set so that the rental alone would pay for all upkeep and provide for retirement of the mortgage period. The plaintiff taxpayer argued that it should be found tax exempt due to its nonprofit status, its stated purpose, its charitable status under federal tax law, the specially designed building and the social programs that it provided.

In the reported opinion, this Court examined several other State Court cases on the topic. Quoting the New Mexico Court it said,

> It is clear that rents are fixed at an amount necessary to pay the interest, amortize the principal, and pay all expenses of maintaining the property. By what theory this should not include taxes on the same basis as other comparable properties is not clear to us... It was intended to be self-supporting, without any thought that gifts or charity be involved. Mountainview Homes, Inc., v State Tax Commission 427 P.2d 13 (1967)

The present facts fall well within the guidelines expressed by the Utah and New Mexico Courts. The Tower charges rent comparative to similar units in the area. The rental is gauged so to pay all costs of maintenance and mortgage combined. Although the federal government pays for a large portion of the rental, the owner of the facility is giving nothing. It is not assuming a burden of government. The government is discharging the burden. None of the funds used to run the facility are donated by anyone holding an altruistic intent.

In holding against the exemption, the Friendship Manor Court focused on the fact that the rental for Friendship Manor units was not based on need, but what was required to retire the principle, together with upkeep expenses. Here, the rental is calculated on the same basis as Friendship Manor. The tenants portion of the rent is based on their gross earnings. The rental actually due is in no way a reflection of the tenants ability to pay. Further, the rental portion not paid by the tenant is not paid by the defendant or any third party wishing to make a charitable gift. The facts determined in the earlier case are equally determinative here.

In the recent past, this Court has decided a number of Fraternal Lodge cases where the issue was whether the property was used exclusively for charitable purpose. See Benevolent and Protective Order of Elks v Tax Commission 536 P.2d 1214 (Utah

1975) and Loyal Order of Moose No. 259 v County Board of Equalization of Salt Lake County 657 P.2d 257 (Utah 1982). These cases have dealt not with the charitable function of the individual organization, but with the exclusiveness of the charitable work provided by each entity upon the property for which the exemption was claimed.

The present facts deal not with whether the defendant functions solely as a charitable organization, but whether its only function fits within the very narrow confines of the charitable definition. This difference in issue is a thin, but very significant one. The Tower's activities do not include both charitable and noncharitable purposes. Its financial organization and payment policy either pushes the Tower property into the tax exemption or prevents its property from being found charitable.

The Utah case most factually similar to the present is obviously the Friendship Manor opinion. That case also began the marked swing toward the more stringent view of tax exemptions visible in this Court's latest opinions. No longer is the individual responsibility of local taxation shifted onto the shoulders of others based on labels resembling a charitable use, yet lacking the essential intent and elements of such charity. Too many needed local government programs currently go unfunded to grant local tax exemptions to those who do not hold the

benevolent self-giving intent so much a part of the term charity. The burden upon the over-burdened taxpayer is constantly increasing.

The Tower simply does not furnish those services currently financed by Salt Lake County and clearly lacks the fact and the intent of giving, all of which are needed before a charitable purpose is established.

POINT V

THE PROVISION OF GOVERNMENT SUBSIDIZED LOW INCOME HOUSING IS NOT A FUNCTION FOR WHICH CHARITABLE EXEMPTIONS ARE GIVEN.

Low income housing whereby the tenants receive a higher living standard for the rent they pay with public funds paying the remaining rental amounts, is not an exclusively charitable function.

In Hilltop Village Inc. v Kerrville Independent School District 487 S.W.2d 167, 168-169 (Texas 1972), the nonprofit corporation had earlier lost a legal battle on the issue of the charitable tax exemption, amended its Articles so to fit within the initial Court opinion and fought the same issue in a later tax year. The Amended Articles specifically gave the tenants the right to remain in the facility even though they could not

pay the costs of their care. The Facility included a nursing home and the facts indicated that tenants were at least charged on the basis of their government assistance. Where the rental payments were insufficient to pay for upkeep and retirement of the mortgage, bona fide gifts and voluntary contributions were sought. The Court again held against the tax exemption because the tenants were accepted on the basis of their financial circumstances which was the government assistance payment.

The Tower's Articles of Incorporation are void of language stating the tenant's right to remain in the facility without the government payments along with the payment of one fourth of the tenant's gross earnings. Unlike Hilltop, the Tower receives no revenue from gifts or voluntary contributions. The Tower is not licensed to perform the activities of a nursing home, as Hilltop was, and the Tower can not replace those services a nursing home provides as Hilltop did.

The Tower's sole purpose, that of accepting government payments to pay the required rental which is set at a fair market value, does not approach the charity even provided by Hilltop and should not be accorded a charitable exemption.

In Lutheran Home, Inc. v Board of County Commissioners of Dickinson County 505 P.2d 1118, 1124-1125 (Kansas 1973) a nursing home-residential facility appealed the County's rejection of their exemption application. The Facility charged fair

market value for its premises with one-half of the tenants making the rental by use of their Welfare assistance. The rental income was sufficient to maintain the building and pay off the mortgage. In discussing the applicable law, the Court cited those cases listed by the defendant, Episcopal Management, ruling for exemption under apparently similar facts. The Court rejected those holdings outright, instead quoting with favor from Mason v Zimmerman 106 p 1005, 1008 (Kansas 1910) it said

> ..."charity" is a gift to promote the welfare of others in need, and "charitable" as used in the constitutional and statutory provisions means intended for charity. In this sense charity involves the doing of something generous for other human beings who are unable to provide for themselves.. Unless there is a gift, there can be no charity.

The Court specifically equated the use of public funds to pay the required rental with that of family funds and refused to find such monies to be in any way charitable. Rejecting the charitable exemption, the Court based its decision on the lack of any gift from the plaintiff corporation to the residents of the home or to any one else.

The only difference between the Tower and Lutheran Home Inc. opinion, is that public funds are a larger part of the Tower's revenue. No gifts or contributions exist in either case. As noted by the Kansas Court, the promotion of charitable gifts being the purpose behind the exemption, no such exemption

can be granted without the gifts existence. As the Court emphasized, public funds are not gifts.

Another case factually similar to the present is Dow City Senior Citizen's Housing, Inc., v Board of Review of Crawford County 230 N.W.2d 497, 498-499 (Iowa 1975). There some business men organized the plaintiff corporation without compensation. The land was cleared by volunteer labor. Cash donations were received in the form of outright gifts and "memberships" selling for $25.00 each which gave the holder voting rights only. The FHA loan used by the corporation required the tenants to earn no more than $9,000.00 annually. Although the rental was not adjusted on need, the Court specifically found no one had ever been rejected for inability to pay the rent. The facility was self-supporting and the units rental was markedly low for their quality. The Iowa Court held against the tax exemption basing its finding on the use of government loan money. It said,

> ..the government, through the FHA loan program, has already assumed a large share of the burden of meeting the need for low-rent housing for elderly persons. Plaintiff has not shown that the exemption statute should be applied in its favor to create an additional burden on other property taxpayers in the community. (emphasis added)

The Iowa Court pointed out that the plaintiff was meeting a real need for the elderly persons in the area, but

meeting a social need was separate and apart from a charitable use.

The Tower not only relies on public funding for its mortgage, but is dependent on the same public funding to pay back the government mortgage. Like Dow City, the Tower now wishes the local taxpayers to take on the additional burden of paying its property tax responsibility.

The cases discussed above indicate that low income housing rarely fits within the narrow construction of the charitable exemption. Case law shows that such housing is never given a charitable exemption when public funds are used to pay the needed rental.

CONCLUSION

The defendant has organized a corporation to provide the elderly a nicer environment in which to live out their lives. The Tower receives no gifts or contributions and in fact is entirely self-supporting by use of public funds and tenant rent. Its goals are laudable, but its methods fall far from the strict construction this Court has required of charitable exemption cases. The Tower's property is not used for an exclusive charitable purpose as the Utah Constitution intended

the term to be defined and as case law has interpreted it. The defendant must be required to pay its share of the local tax obligation.

The decision of the Trial Court should be reversed and the subject property should be placed upon the tax rolls of Salt Lake County for the year 1980 and all subsequent years.

Respectfully submitted this
29th day of April, 1983,

THEODORE CANNON
Salt Lake County Attorney

By 
BILL THOMAS PETERS
Special Deputy County Attorney

CERTIFICATE OF SERVICE

I, Bill Thomas Peters, do hereby certify that I mailed two true and correct copies of the aforegoing BRIEF OF APPELLANT to Albert J. Colton, Attorney for Defendant-Respondent, postage prepaid, at 800 Continental Bank Bldg., Salt Lake City, Utah 84101, this 29th day of April, 1983.


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1889-1971
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1909-1974

July 9, 1985

Geoffrey Butler, Esq., Clerk
Utah Supreme Court
322 State Capitol Building
Salt Lake City, Utah 84114

Re: R. Milton Yorgason v. County Board of Equalization of Salt Lake County, ex. rel., Episcopal Management Corp., Case No. 18986

Dear Mr. Butler:

Pursuant to Rule 24(j) of the Utah Rules of Appellate Procedure, the Episcopal Management Corp., defendant-respondent, submits supplemental authority in the above-referenced appeal. This matter was argued before the Court on October 16, 1984. The Episcopal Management Corp. wishes to bring to the Court's attention, the case of Rio Vista Non-Profit Housing Corp. v. County of Ramsey, 277 N.W. 2d 187 (Minn. 1979), a copy of which is attached hereto.

In Utah County v. Intermountain Health Care, Inc., No. 17699 (filed June 26, 1985), the Utah Supreme Court enumerated six factors "which must be weighed in determining whether a particular institution is, in fact, using its property 'exclusively for . . . charitable purposes.'" Id. slip op. at 6. The six factors enumerated were adapted from the six-part test set forth by the Minnesota Supreme Court in North Star Research Institute v. County of Hennepin, 306 Minn. 1,6, 236 N.W. 2d 754, 757 (1975). Id. slip op. at 6 n. 6.

In a subsequent case, the Minnesota Supreme Court addressed whether "a non-profit corporation which provides housing under a . . . federally subsidized program to families of modest incomes [is] an institution of purely public charity . . ." Rio Vista Non-Profit Housing Corp. v. County of Ramsey, 277 N.W. 2d 187, 189 (Minn. 1979). In that case, the Minnesota Supreme Court applied its six-factor test in deter-

mining that such a non-profit corporation was an institution of purely public charity. Id. at 190-92. The Minnesota Supreme Court addressed the very issues which are before this Court in the instant appeal. In particular, the Rio Vista court held that federal government support of a non-profit corporation satisfies the requirement that a charitable institution be supported by donations and gifts. Id. at 190-91. In fact, the Rio Vista court concluded that the non-profit housing corporation in that case met each of the six factors of Minnesota Law. Because the six factors enumerated by the Utah Supreme Court are almost identical to those enumerated by the Minnesota Supreme Court, the Minnesota Supreme Court's decision in Rio Vista is of particular import to the instant appeal.

Sincerely,

FABIAN & CLENDENIN
A Professional Corporation

By _____
Albert J. Colton

JESR/AJC/lah
Enclosure

CERTIFICATE OF MAILING

I hereby certify that I caused a copy of the foregoing letter to be mailed, postage fully prepaid, to: Bill Thomas Peters, No. 10 Exchange Place, Suite 1000, Salt Lake City, Utah 84111 this 9th day of July, 1985.

_____

In the Matter of the Petition of RIO VISTA NON-PROFIT HOUSING CORPORATION for Review of Objections to Real Property Taxes Payable in 1976, Appellant,

v.

COUNTY OF RAMSEY, Respondent,

State of Minnesota, Respondent.

No. 48302.

Supreme Court of Minnesota.

Feb. 23, 1979.

Nonprofit corporation, which provided housing under a federally subsidized program to families of modest income, appealed from ruling of District Court, Ramsey County, Stephen L. Maxwell, J., which held that it was not an institution of purely public charity and therefore not exempt from taxation. The Supreme Court, Todd, J., held that: (1) nonprofit corporation qualified as institution of purely public charity, and (2) statute providing for assessments based on 20% market value on certain low-rent housing did not apply to nonprofit corporation.

Reversed.

1. **Taxation ⇐241.1(1)**

Factors to be considered in determining whether an entity comes within definition of a "charity" for taxation purposes are: (1) stated purpose of undertaking, (2) whether entity involved is supported by donations, (3) whether recipients of the "charity" are required to pay for assistance received, (4) whether income received produces a profit, (5) beneficiaries of the "charity" and (6) whether dividends, or assets upon dissolution are available to private interests.

See publication Words and Phrases for other judicial constructions and definitions.

2. **Taxation ⇐241.1(2)**

For purposes of determining whether nonprofit corporation providing federally subsidized housing was a "charity" so as to be exempt from real estate taxation, fact that federal government, and not a private institution was donor did not preclude determination that nonprofit corporation was supported in part by donations. M.S.A. Const. art. 10, § 1; M.S.A. § 272.02.

3. **Charities ⇐1**

Nonprofit corporation's providing of housing for low and moderate income families furthered a charitable objective and lessened burdens of government so as to satisfy one of six factors employed in determining whether an institution could properly be defined as a "charity."

4. **Taxation ⇐241.1(5)**

Fact that portion of rents received by nonprofit corporation, which provided housing for families of modest income, was from tenants did not preclude finding that nonprofit corporation qualified as an institution of purely public charity so as to be entitled to tax exemption where federal government subsidized tenant's payments to such an extent that tenants did not provide a major source of project's revenue.

5. **Taxation ⇐241.1(2)**

Nonprofit corporation, which provided housing under a federally subsidized program to families of modest income, qualified as a tax-exempt institution of purely public charity. M.S.A.Const. art. 10, § 1; M.S.A. § 272.02.

6. **Taxation ⇐241.1(2)**

Statute providing for assessments based on 20% of market value on certain low-rent housing did not apply to nonprofit corporation, which provided housing under a federally subsidized program to families of modest income so as to qualify as a tax-exempt institution of purely public charity. M.S.A. §§ 272.02, 273.13, subd. 17; M.S.A.Const. art. 10, § 1.

Syllabus by the Court

1. Appellant nonprofit corporation, which provides housing under a Federally subsidized program to families of modest income, qualifies as a tax-exempt institution of purely public charity.

2. Minn.St. 273.13, subd. 17, which imposes a 20-percent tax on certain low-rent housing, does not apply to tax-exempt institutions of purely public charity.

Doherty, Rumble & Butler and Timothy J. Halloran, St. Paul, for appellant.

William Randall, County Atty., Steven DeCoster and Thomas Poch, Asst. County Attys., St. Paul, Warren Spannaus, Atty. Gen., James W. Neher, Special Asst. Atty. Gen., Dept. of Revenue, St. Paul, for respondents.

Heard before PETERSON, TODD, and SCOTT, JJ., and considered and decided by the court en banc.

TODD, Justice.

Rio Vista Non-Profit Housing Corporation (Rio Vista) was organized for the purpose of providing low-rent housing to families of modest income. The construction costs and part of the rental income are from Federally subsidized programs. Rio Vista challenged the assessment of real estate taxes against its property. The trial court allowed the taxes, asserting that Rio Vista was not an institution of purely public charity and therefore not exempt from taxation. We reverse.

The matter was submitted to the trial court on stipulated facts, together with brief and oral testimony on behalf of Ramsey County. The transcript of the oral testimony was not furnished on appeal. Essentially, the stipulated facts disclose that Rio Vista was incorporated in 1971 as a nonprofit corporation under Minn.St. c. 317. The purpose of the corporation was to provide low-rent housing to families of low and moderate incomes. A 48-unit complex was completed in 1972. The entire cost of construction was financed by a bank under the Federal Housing Program known as "section 236." Under this program, the Federal Government guarantees the loan and pays directly to the bank the difference between the 7-percent interest charged by the bank on the loan and the 1-percent interest on the loan charged to and paid by Rio Vista. Payments on the principal are also paid by Rio Vista.

The loan is repaid mainly through rents charged to the tenants. Under the section 236 program, Rio Vista must establish two standards of rent—(1) basic rent determined according to payments of principal on the loan and the 1-percent interest, and (2) a fair market rent determined according to the payments of principal, interest, and mortgage insurance.[1] The fair market rent is calculated according to amounts needed to repay the loan. However, tenants who satisfy the eligibility requirements of the section 236 program[2] pay an amount of rent equal to 25 percent of their income or the basic rent, whichever is greater. In no event, however, is the tenant charged more than the fair market rent. Almost all tenants at Rio Vista pay the basic rent and none are wealthy enough to pay the fair market rent.

Under a different Federal program—the Rent Supplement Program—the Federal

Number of Persons in Household	Maximum Annual Income
1 person	$ 9,600
2 persons	11,000
3 persons	12,400
4 persons	13,800
5 persons	14,700
6 persons	15,500

A tenant must also qualify as one of the following: (1) Be a member of a family of two or more persons related by blood, marriage, or operation of law, who occupy the same unit; (2) a single person, 62 years of age or older; (3) physically handicapped, (4) a single person under 62 years of age, provided that no more than

1. In 1972, the basic rents were $109 for a 1-bedroom unit and $154 for a 2-bedroom unit, and the market rents were $169 and $239, respectively. In 1975, the basic rent of the 1-bedroom unit was raised to $125, and the 2-bedroom unit was raised to $165. The market rent increased to $186 and $246, respectively. In 1976, the basic rent increased by charging the tenants for electricity.

2. To be eligible for payment of a monthly rent less than the fair market value rent established for the unit, a tenant must not have income in excess of the following amounts:

Government pays, for eligible tenants, an amount equal to their basic rent minus 25 percent of their income. The net result of the rent supplement is that the eligible tenants have to expend no more than 25 percent of their income for rent. Nineteen of the 48 tenants qualify for the rent supplement.

Rio Vista paid real estate taxes on the property from 1974 to 1976 on the basis of a 20-percent assessment. The taxes in 1976 were $14,278.54. Rio Vista paid the first half of these in May 1976 and then brought an action to recover the 1976 taxes, arguing it is a tax-exempt charity.[3] The trial court disallowed the claim, asserting that Rio Vista was not an institution of purely public charity so as to qualify for a tax-exempt status as provided by Minnesota law.

The issues presented are:

(1) Is a nonprofit corporation which provides housing under a section 236 Federally subsidized program to families of modest incomes an institution of purely public charity for purposes of Minnesota real estate taxes?

(2) Is an institution of purely public charity obligated to pay real estate taxes under Minn St. 273.13?

1. Minnesota law provides a tax exemption to institutions of purely public charity. Minn.Const. art. 10, § 1; Minn.St. 272.02, subd. 6. There is no question that Rio Vista is liable for the tax, as determined by the trial court, if it does not qualify as a purely public charity. The Internal Revenue Service and Minnesota Department of Revenue have concluded that Rio Vista is a tax-exempt charity for the purpose of income taxation, but these determinations are not controlling on the issues before us.

Several other jurisdictions have addressed the question of whether privately operated, low-rent housing is entitled to tax-exempt status where funds or subsidies are provided by the Federal Government. These courts have not been consistent in their result or reasoning. Several courts have determined that such housing is not tax exempt because of such reasons as the significant rent paid by the tenants,[4] the donations came from the government rather than private sources,[5] and low-income housing does not further a charitable objective.[6] On the other hand, two courts have considered the tax-exempt status of section 236 housing in particular and both have concluded the housing is tax exempt.[7] A Pennsylvania court also granted tax-ex-

10 percent of the available apartments are rented to such persons, or (5) a displacee

3. This action was brought under Minn.St. c. 278. For an in-depth discussion of the grounds and procedures for challenging Minnesota real property taxes, see, Note, 4 Wm. Mitchell L.Rev. 371.

4. In *Mountain View Homes, Inc. v. State Tax Comm'n.*, 77 N.Mex. 649, 427 P.2d 13 (1967), the court relied heavily on the fact that the tenants were charged rent in an amount sufficient to pay the cost of the project.

In *Westminister Gerontology Foundation, Inc. v. State Tax Comm'n.*, 522 S.W.2d 754 (Mo.1975), the Missouri Supreme Court concluded that the housing in question was not entitled to a tax exemption as a charity, relying heavily on the fact that significant rents were collected from the tenants. This case has since been disapproved by the Missouri court in *Franciscan Tertiary Prov. v. State Tax Comm'n.*, 566 S.W.2d 213 (Mo.1978), where the Missouri Supreme Court indicated that the case erroneously overlooked the fact that the rents had been provided at a substantial cost savings from Federal subsidies "comparable to charitable contributions from individuals or corporations." 566 S.W.2d 223.

5. *Waterbury First Church Housing, Inc. v. Brown*, 170 Conn. 556, 367 A.2d 1386 (1976).

6. Although the Pennsylvania court had recognized in *Four Freedoms House of Philadelphia, Inc. v. Philadelphia*, 443 Pa. 215, 279 A.2d 155 (1971), that Federally assisted housing for the elderly is entitled to a tax exemption, a Pennsylvania lower court has construed that decision as restricting the exemption to housing for the elderly because housing for low and moderate income persons does not further a charitable objective. *Metropolitan Pittsburgh Nonprofit Housing Corp. v. Board of Property Assessment, Appeals and Review*, 28 Pa. (Cmwlth.) 356, 368 A.2d 837 (1977).

7. *Banahan v. Presbyterian Housing Corp.*, 553 S.W.2d 48 (Ky.1977); *Franciscan Tertiary Prov. v. State Tax Comm'n., supra*. These cases are virtually indistinguishable from the Rio Vista situation.

empt status to a similar housing project, even though rent was paid by the tenants because such rent was below fair market rent.[8]

The Minnesota Supreme Court has never addressed the precise issue presented in this case. Although an exhaustive definition of "charity" cannot be given, this court has adopted the following general definition (*In re Junior Achievement of Greater Minneapolis v. State*, 271 Minn. 385, 390, 135 N.W.2d 881, 885 [1965]):

> "The legal meaning of the word 'charity' has a broader significance than in common speech and has been expanded in numerous decisions. Charity is broadly defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons 'by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government."

Accord, *Mayo Foundation v. Commr. of Revenue*, 306 Minn. 25, 33, 236 N.W.2d 767, 771 (1975).

[1] Recently, this court set forth six factors to be considered in determining whether the entity in question comes within this definition (*North Star Research Inst. v. County of Hennepin*, 306 Minn. 1, 6, 236 N.W.2d 754, 756 [1975]):

> "* * * (1) whether the stated purpose of the undertaking is to be helpful to others without immediate expectation of material reward; (2) whether the entity involved is supported by donations and gifts in whole or in part; (3) whether the recipients of the 'charity' are required to pay for the assistance received in whole or in part; (4) whether the income received from gifts and donations and charges to users produces a profit to the charitable institution; (5) whether the beneficiaries of the 'charity' are restricted or unrestricted and, if restricted, whether the class of persons to whom the charity is made available is one having a reasonable relationship to the charitable objectives; (6) whether dividends, in form or substance, or assets upon dissolution are available to private interests."

Accord, *Minnesota State Bar Assn. v. Commr. of Taxation*, 307 Minn. 389, 392, 240 N.W.2d 321, 323 (1976); *Mayo Foundation v. Commr. of Revenue*, 306 Minn. 34, 236 N.W.2d 772.

Applying these factors, there is little question that three of them support the conclusion that Rio Vista is a tax-exempt charity. Applying the first factor, the purpose of Rio Vista, as stated in its bylaws and articles of incorporation, is to provide housing to low and moderate income families on a nonprofit basis. Applying the fourth factor, Rio Vista has not made a profit, losing from $16,802 to $22,588 in the years 1972 through 1976. Applying the sixth factor, Rio Vista's articles of incorporation require that upon dissolution, the assets shall be disposed of in a manner that precludes any distribution to a private interest.

Application of the remaining factors presents greater difficulty. The second factor looks to the extent of support by donations. Without a doubt, the very existence of Rio Vista can be attributed to support from the Federal Government because the government guaranteed and funded in part the low-interest construction loan and it also provides a significant rent assistance. There is some question, however, of whether this factor encompasses governmental assistance as well as private donations. The trial court concluded that the donations must be private rather than public. However, at least one Minnesota case, as well as cases from other jurisdictions,[9] indicates that the donation may be from public as

8. *Four Freedoms House of Philadelphia, Inc. v. Philadelphia, supra* Generally, courts are less willing to deny the tax-exempt status when the amounts paid by beneficiaries of the charity are less than cost. Annotation, 37 A.L.R.3d 1191, 1203

9. See cases cited in footnotes 7 and 8.

well as private sources. In *In re Claim of Assembly Homes, Inc. v. Yellow Medicine County*, 273 Minn. 197, 140 N.W.2d 336 (1966), this court held that a nursing home was a tax-exempt charity even though the residents' care was paid by the county welfare boards and the Veterans Administration, as well as by private contributions.

[2] We conclude that Rio Vista satisfies the requirements of the second factor. The fact that the donor is the Federal Government and not a private institution does not preclude a determination that Rio Vista is supported in part by donations.

We now turn to the fifth factor—whether the class of beneficiaries has a reasonable relationship to charitable objectives. Rio Vista argues that housing for low and moderate income families furthers a charitable objective. As demonstrated by this court's definition of "charity" set forth in *In re Junior Achievement of Greater Minneapolis v. State, supra*, this factor is intertwined with the question of whether such housing "lessens the burdens of government."

[3] We conclude that housing for low and moderate income families furthers a charitable objective and lessens the burdens of government. It would be anomalous to hold that governmental objectives are not furthered by a nonprofit corporation which implements a Federally created and funded program. The trial court concluded that the burdens of government were increased from the program because Federal funds were spent. In this regard the trial court confused the second factor of "donation" with the fifth factor of "charitable objective." If private organizations did not implement these Federally assisted housing projects, presumably the government might seek to implement them through government agencies. Thus, private organization which assist the Federal Government in the implementation of these projects do promote charitable objectives and lessen the burdens of government.

Our conclusion is buttressed by decisions of this court and statements of the Minnesota Legislature. This court on several occasions has stated that redevelopment and construction of dwellings under housing and redevelopment statutes has a "public purpose" in the context of eminent domain. *Housing and Redevelopment Authority v. Froney*, 305 Minn. 450, 234 N.W.2d 894 (1975); *Housing and Redevelopment Authority v. Greenman*, 255 Minn. 396, 96 N.W.2d 673 (1959); *Thomas v. Housing and Redevelopment Authority of Duluth*, 234 Minn. 221, 48 N.W.2d 175 (1951). The legislature also has declared that shortage of housing for low and moderate income families is inimical to public welfare. Minn.St. 462A.02, subd. 2. By analogy, private entities that provide housing for low and moderate income families should be deemed to further a public purpose and lessen the burdens of government.

[4] The most troublesome issue is presented by the application of the third factor—whether recipients of the charity are required to pay for the assistance in whole or in part. This factor has been considered in three Minnesota cases. In *Camping & Education Foundation v. State*, 282 Minn. 245, 164 N.W.2d 369 (1969), this court denied tax-exempt status to a camp which was supported mainly through tuition, characterizing the camp as a "commercial activity." In *Madonna Towers v. Commr. of Taxation*, 283 Minn. 111, 167 N.W.2d 712 (1969), this court denied tax-exempt status to a retirement apartment complex where the basic financial plan of the project was to create the capital structure by the proceeds of a membership fee. This court denied tax-exempt status to a similar retirement apartment complex in the case of *State v. United Church Homes*, 292 Minn. 323, 195 N.W.2d 411 (1972).

The situation at Rio Vista cannot be distinguished easily from these cases. The monthly basic rents presently charged at Rio Vista are $125 for a 1-bedroom unit and $165 for a 2-bedroom unit, plus electricity. The commercial nature of the operation is also reflected in the fact that a tenant may be evicted for failure to pay rent. Further, the exhibits indicate that rents cover approximately 77 percent of the total operating costs at Rio Vista.

However, our reading of the record also indicates that much of this rent is actually paid by the Federal Government. Thus, rents actually paid by tenants are *not* the major source of revenue to the project. This is a distinguishing feature of the Rio Vista situation: Tenants receive the housing at considerably less than market value or cost. This is unlike the situation in the *Camping & Education Foundation, Madonna Towers,* and *United Church Homes* cases.

[5] Considering all six factors, we conclude that Rio Vista is an institution of purely public charity. Admittedly, the question is close. The decision of the trial court is supported by a well-reasoned memorandum. Nevertheless, we conclude that Rio Vista meets the standards and definitions devised by this court for qualification as an institution of purely public charity. The fact that a purely public charity receives some remuneration from those it benefits does not deprive the institution of its charitable exemption. The amount of remuneration in relation to benefits conferred always require an analysis of the facts of each case.

[6] 2. We find no merit to the state's contention that institutions of purely public charity lose their tax-exempt status by reason of Minn.St. 273.13, subd. 17, which provides that Title II housing for the elderly or for low and moderate income families shall be assessed at 20 percent of the market value for the purpose of real property taxes.[10] There is no question that Rio Vista's property is Title II housing. However, it is argued by Rio Vista that § 273.13 is a classification statute rather than a taxing statute, and therefore the statute has no application to tax-exempt institutions of purely public charity.

We agree. Section 273.13, subd. 1, states:

> "All real and personal property *subject to a general property tax* and not subject to any gross earnings or other lieu tax is hereby classified for purposes of taxation as provided by this section." (Italics supplied.)

Giving effect to this language, the 20-percent assessment under § 273.13, subd. 17, is not applicable to tax-exempt property because such property is not "subject to a general property tax." Section 273.13 classifies property which is already subject to taxation; it does not authorize the imposition of a new tax on otherwise untaxed property.

Our conclusion is supported by other statutory provisions. Institutions of purely public charity derive their exemptions from taxation under the provisions of Minn.St. 272.02. According to the language of that section, the tax-exempt status is limited only by the provisions set forth in §§ 272.02 and 272.025. Had the legislature intended to limit or remove the tax-exempt status of charitable Title II housing, it could have provided such in § 272.02 or § 272.025. By placing the provision for a 20-percent tax on Title II housing in § 273.13, we hold that the tax-exempt status of Rio Vista is unaffected and that the 20-percent tax does not apply to tax-exempt institutions of purely public charity.

Reversed.

OTIS, J., took no part in the consideration or decision of this case.

10. Minn.St. 273.13, subd. 17, provides: "A structure situated on real property that is used for housing for the elderly or for low and moderate income families as defined by Title II of the National Housing Act or the Minnesota housing finance agency law of 1971 or regulations promulgated by the agency pursuant thereto and financed by a direct Federal loan or Federally insured loan or a loan made by the Minnesota housing finance agency pursuant to the provisions of either of said acts and acts amendatory thereof shall, for 15 years from the date of the completion of the original construction or substantial rehabilitation, or for the original term of the loan, be assessed at 20-percent of the market value thereof, provided that the fair market value as determined by the assessor is based on the normal approach to value using normal unrestricted rents."

Subd. 17a provides: "The provision of subdivision 17 shall apply only to non-profit and limited dividend entities."