

April 26, 2006

David J. Baird, Chairman
Clinton Board of Assessors
242 Church St.
Clinton, MA 01510-2624

Re: Clinton Home for Aged People, Inc.
Our File No. 2006-37

Dear Mr. Baird:

I am writing in regard to your question whether certain real property of the Clinton Home for Aged People, Inc. ("Clinton Home") qualifies for a property tax exemption. Based on the information you provided to us, it is our understanding that the Clinton Home was organized in 1902 as a nonprofit corporation to administer an endowment fund to provide assistance and financial resources to the elderly and indigent and to organizations serving the elderly. The Clinton Home owns a building located at 271 Church Street in Clinton for which it has received charitable exemptions in past years. Until 2004, the building was used as a rest home for people aged 55 and over. Residents paid rent on a monthly basis and received a room, meals, laundry service and transportation to appointments. In 2004, however, the Board of Trustees of the Clinton Home ceased using the building as a rest home. The remaining residents were given notice of the change and assistance in finding alternative housing.

You wrote seeking a formal opinion as to the exempt status of the property located at 271 Church Street. As you know, the requisites, which a charitable organization must satisfy in order to qualify for a tax exemption on real property, are set out in Chapter 59, Section 5, Clause Third of the General Laws. This provision allows an exemption from property tax assessment upon:

"real estate owned or held in trust for a charitable organization and occupied by it or its officers for the purposes for which it is organized or by another charitable organization or organizations or its or their officers for the purposes of such other charitable organization or organizations."

This statutory provision sets out three, discrete requisites, all of which must be satisfied in order for real property to qualify for exempt status. First, the organization must be a charity. Secondly, the charitable organization must own the property. And finally, the charitable organization or some other charitable organization must occupy the property for a charitable purpose.

The Clinton Home claims to administer an endowment fund to provide financial resources to facilities, associations and institutions that advance the health and welfare of the elderly and indigent. These purposes and activities would likely be considered charitable in nature. Corporations formed to assist in carrying out charitable purposes may themselves be charitable organizations for purposes of property tax exemptions even if they do not perform directly any charitable functions. See Assessors of Boston v. Vincent Club, 351 Mass. 10 (1966); Children's Hospital Medical Center v. Assessors of Boston, 353 Mass. 35 (1967).

Thus, the issue here appears to relate solely to the occupancy requirement for the building owned by the Clinton Home. Even if the Clinton Home is considered a charitable organization, it still must show that the occupancy and use of its building is in furtherance of its stated charitable purposes. See Boston Lodge, B.P.O.E. v. City of Boston, 217 Mass. 176 (1914); Salem Lyceum v. City of Salem, 154 Mass. 15 (1891). An organization that conducts charitable activities is not entitled to claim the charitable exemption if the dominant use of the organization's property is for purposes that are not a part of, or incidental to, the organization's charitable purposes. Id.

In our view, the decision in Assessors of Dover v. Dominican Fathers Province of St. Joseph, 334 Mass. 530 (1956) established a standard for property with respect to occupancy for Clause Third purposes. The use must be "so substantial that for all practical purposes the property could be said to be occupied for the purposes for which the taxpayer was organized." Dominican Fathers Province of St. Joseph, 334 Mass. at 540-41. To this end, we have advised that while the use of a building by a charity does not have to be intensive, it must be substantial enough that the building is considered dedicated to the charitable purpose.

The Clinton Home's abatement application states that the building is occupied and used to host events sponsored by eldercare organizations and to provide services and space to senior organizations. During 2005, the building apparently was used by various eldercare organizations for numerous meetings, social events and group functions. Information submitted by you, however, indicates that building currently is being operated as a bed & breakfast and rental facility for social events and meetings. In addition, according to the newspaper article you submitted, the director of the building and her husband reside on the premises.

If a charitable owner occupies property for a combination of charitable and non-charitable activities, only the portion of the property occupied for charitable purposes is entitled to exemption. Making space available to the public for community events could be considered a use of the property for the organization's charitable purposes. In addition, if a defined portion of the property is used by the Clinton Home as its administrative offices, i.e., as the place where records are stored and trustees or officers conduct the organization's business, that portion may qualify for exemption.

The portion used as the director's residence, however, can qualify for exemption only if the assessors find that residential use of the property by officers of the organization is essential to the operation of the organization and in furtherance of its charitable purposes. If the property is being operated primarily as a bed & breakfast and rental facility, those uses would be for commercial, not charitable, purposes. In that case, the director's occupation of the property as a residence would not be necessary for the operation of the charity. Residential property used to house an organization's personnel is not exempt where it is provided primarily for personal convenience or

private benefit. See e.g., Phi Beta Epsilon Corp. v. City of Boston, 182 Mass. 457 (1903); William T. Stead Memorial Center of New York v. Town of Wareham, 299 Mass. 235 (1938).

In our view, whether the Clinton Home's stated activities and actual uses are "so substantial that for all practical purposes the property could be said to be occupied for the purposes" of providing financial resources to facilities, associations and institutions that advance the health and welfare of the elderly and indigent is a determination that the board of assessors must initially make. In this regard, we note that it would be important to evaluate the Clinton Home's charitable use of the property against any social, commercial, or other non-charitable uses that the Clinton Home may also make of the property. We also note that, to the extent that the Clinton Home disagrees with the determination made by the assessors, it may appeal to the Board of Assessors and the ATB, if necessary.

We hope that this information is helpful. If you have any additional questions concerning this matter, please do not hesitate to contact us.

Very truly yours,



Kathleen Colleary
Chief, Bureau of Municipal Finance Law

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