



October 21, 2009

Ms. Marion A Fantucchio, Chairperson
Quincy Board of Assessors
Quincy City Hall
1305 Hancock Street
Quincy, MA 02169

Re: Exemption Eligibility of Physicians' Practice Group
Our File No. 2009-1071

Dear Ms. Fantucchio:

You have requested our opinion as to the eligibility of a physicians' practice group for the property tax exemption afforded to charitable organizations at G.L. c. 59, § 5, Clause 3. This entity (the "claimant") is incorporated under Chapter 180 of the General Laws and has received recognition of exempt status from the Internal Revenue Service for purposes of Internal Revenue Code § 501(c)(3). According to the Articles of Organization filed with the Secretary of State, the corporation "is organized and shall be operated exclusively for charitable and educational purposes ... [which] include but are not limited to" 1) working with affiliates "to establish an integrated healthcare delivery system to improve the quality of medical, surgical, behavioral, dental and other related health care services provided to patients in Eastern and Central Massachusetts...;" 2) providing "medical, dental and psychological care to patients;" 3) improving health care services "through the creation of a merged database" of medical and other information; 4) conducting medical research; 5) offering clinical training to medical students, interns, residents, and other health care professionals; and 6) providing "free or below cost care to residents of Eastern and Central Massachusetts." The Articles further prohibit private inurement, but permit the payment of "reasonable compensation for services rendered," including, without limitation, medical services provided by physician employees.

The Commissioner of Revenue does not determine the status of property for local tax purposes. Property taxes in Massachusetts are assessed and collected by cities and towns, not by the state. The Board of Assessors of the City of Quincy, as the local tax administrator, has the sole power to determine whether the real and personal property owned by the claimant is exempt. However, we offer the following advisory comments about the determination of the claimant's eligibility for the exemption for charitable organizations at G.L. c. 59, § 5, Clause 3.

"[R]eal estate owned by a 'charitable organization and occupied by it or its officers for the purposes for which it is organized'" is entitled to exemption from local property taxes. *See New Habitat, Inc. v. Tax Collector of Cambridge*, 451 Mass. 729, 731-32 (2008), citing G.L. c. 59, § 5, Clause 3. The Supreme Judicial Court in *New Habitat*

Ms. Marion Fantucchio
October 16, 2009

invoked the following definition to identify “the traditional objects and methods of charity[:]”

‘A charity, in the legal sense, may be more fully defined as a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.’

Id. at 732, quoting *Boston Symphony Orchestra, Inc. v. Assessors of Boston*, 295 Mass. 248, 254-55 (1936).

While the foregoing definition is not exhaustive, the more remote an organization’s purposes are from this traditional understanding of charitable activity, the greater the extent to which the organization’s status must be evaluated by reference to the “community benefit” test. See *Mary Ann Morse Healthcare Corp. v. Assessors of Framingham*, 74 Mass. App. Ct. 701, 703-705 (2009), citing *Western Mass. Lifecare Corp. v. Assessors of Springfield*, 434 Mass. 96 (2001). “The number of individuals receiving services, whether they are from diverse walks of life, the fees charged to those individuals, and the relationship between the service fees and the cost of those services to the provider—all these are factors that inform a decision under the community benefit test; where however an organization is found to be traditionally charitable in nature, these factors play ‘a less significant role in our determination of its charitable status’ for purposes of the property tax exemption.” *Mary Ann Morse Healthcare Corp.*, 74 Mass. App. Ct. at 703-704. (Citations omitted.)

The Supreme Judicial Court has held that “the promotion of health whether through the provision of health care or through medical education and research, is today generally seen as a charitable purpose.” *Harvard Community Health Plan, Inc. v. Board of Assessors of Cambridge*, 384 Mass. 536, 543 (1981). In light of the *New Habitat* and *Mary Ann Morse Healthcare Corp.* cases, it is possible that providing health care services and conducting medical education and research on a non-profit basis may qualify as “traditionally charitable” in character.

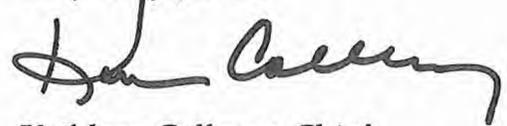
Additionally, in the context of physician practice groups operated as non-profit corporations, the Appeals Court has emphasized the “absolute prohibition against private inurement” *Sturdy Memorial Foundation, Inc. v. Assessors of North Attleborough*, 47 Mass. App. 519, 522 (1999). The prohibition is violated “where, for example, the physicians ‘employed’ by it serve on its board or otherwise exert control over its finances ... [or] ‘if the payment of salaries is a mere device for securing to the beneficial owners the profits which may accrue.’” *Id.* (Citation omitted.) In the *Sturdy Memorial Foundation* case on remand, the Appellate Tax Board found that taxpayer ineligible for exemption, in part, because of the generosity of its compensation packages

Ms. Marion Fantucchio
October 16, 2009

for physicians. *Sturdy Memorial Foundation, Inc. v. Assessors of North Attleborough*, (Nos. F232985 & F239883, April 22, 2002) ATB Findings of Fact and Report 2002-161, 171-72. The determination of whether there is impermissible private inurement requires a careful review of the facts and circumstances of the claimant, particularly with respect to corporate governance and compensation practices.

The foregoing principles should assist the decision of the Board of Assessors of Quincy as to whether real estate owned by the claimant qualifies for exemption under G.L. c. 59, § 5, Clause 3. Please do not hesitate to contact us if we can be of further assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathleen Colleary", written in a cursive style.

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC: DG