

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date January 14, 1966

To Merton R. Johnson, Superintendent

Dept. Reformatory for Men

From Courtland D. Perry, Assistant Atty. Gen'l. Dept. Mental Health and Corrections

Subject "Charitable Organizations" Qualifying for Assistance Under Title 34, M.R.S.A. 1964, §5.

FACTS:

The 102nd Legislature by P.L., 1965, c. 375, §1 amended T., 34, M.R.S.A. 1964, §5 by adding the following:

".....The department may further authorize the use of such prisoners or inmates to provide assistance in the improvement of property owned by charitable organizations as may be approved by the department, provided such charitable organizations pay for the transportation and per diem compensation for any guards who accompany such prisoners or inmates. Any prisoner or inmate who escapes from any assignments described in this section, or any other assignment beyond the walls of the State Prison or off the grounds of the Reformatory for Men shall be guilty of escape under this Title or Title 17, section 1405."

Requests have been received by the Reformatory for Men from the Pine Tree Council, Inc., Boy Scouts of America, for assistance in the improvement of property at Camp Hinds, a Boy Scout summer camp, and from a representative of the Lake Pine Association, for assistance in the improvement of a hall owned and maintained by it.

QUESTION:

1. Is the Pine Tree Council, Inc., Boy Scouts of America, a "charitable organization" as contemplated by P.L., 1965, c. 375, §1?

ANSWER:

Yes.

QUESTION:

2. Is the Lake Pine Association a "charitable organization" as contemplated by P.L., 1965, c. 375, §1?

ANSWER:

No.

OPINION:

The following quotations are set forth in order to establish a yardstick by which to measure the merits of the two organizations in question:

6 Words and Phrases, Charitable Corporations, Supplement, P. 221, (1965)

"A 'charitable corporation' is one whose principal aim is to give of its material substance or time to benefit those who need such assistance, or will be benefited by such gift or expenditure in some other way than simply by improvement of morals or bringing them under influence of gospel."

6 Words and Phrases, Charitable Corporations, Supplement, P. 221, (1965)

"'Charitable corporations' are such as are constituted for the perpetual distribution of the free alms of the founders, and a distinctive feature is that they make no provision for making dividends or profits but hold their funds in trust for the object of the institution, the test of whether an enterprise is charitable being whether it exists to carry out a purpose recognized in law as charitable or whether it is maintained for gain, profit or private advantage."

10 Am. Jur. Charitable Organizations, §134, (1937)

".....The true test of an institution is its origin and objects. If it is founded on donations, and has for its purpose the accomplishment of a charity by the distribution of alms, it most unquestionably is charitable. Thus, a corporation which has for its sole object the education and instruction of the deaf and dumb, supporting and instructing indigent persons of that class gratuitously and receiving a pecuniary compensation from pupils able to make it, and which derives its means of dispensing charity from the donations of individuals and of the public and applies its funds exclusively to the general object of the institution, is a charitable corporation. A corporation organized as a body corporate, conducting annual fairs for the exhibit of agricultural products, is not a charitable organization, inasmuch as the primary object is not education, but amusement and recreation."

"Although much of the work of a corporation which has no capital stock and which applies all of its revenues to the purposes of its organization may be of a charitable nature, yet, if its purposes are also social, the corporation is not a public charitable corporation, but one established for the peculiar benefit of its members."

SEE ALSO; 15 Am. Jur. 2nd, Charitable Institutions and Organizations, §§146, 147 (1964)

15 Am. Jur. 2nd. Charitable Institutions and Organizations,
§149. Membership organization (1964)

"The status of membership organizations confining their benefits mostly or entirely to members and their families, as charities, is doubtful. Much depends upon the nature and extent of operation and the stated purposes of the particular organization; and frequently the objective of the legislation to be applied, as well as its precise phrasing, are important factors in determining whether such an organization is a charity within the purview of the legislative intent....."

6 Words and Phrases Charitable Purposes, Supplement, 230 (1965)

"'Charitable purposes' include the relief of poverty, the advancement of education, the advancement of religion, the promotion of health, governmental or municipal purposes and other purposes the accomplishment of which is beneficial to the community."

The application of two criteria can be discerned in the foregoing definitions:

1. In what manner does the organization derive its funds and, 2. for what purpose are such funds expended? Applying these criteria to Pine Tree Council, Inc., Boy Scouts of America we find the following: The Council receives its funds primarily as a participating agency under eight Community Chests or United Funds and as a recipient of donations from individuals in one hundred seventy-five other communities in the State. A fee is charged boys attending Camp Hinds; however, the aggregate of such fees received during the camping season covers only a fraction of the cost of operating the camp. The Council also receives from interested individuals "camperships" which enable boys to attend the camp who could not otherwise attend.

The purposes of the Pine Tree Council, Inc., as expressed in its Certificate of Incorporation are as follows:

"To promote in boys the ability to do things for themselves and others, to train them in Scoutcraft and to teach them patriotism, courage, self-reliance and kindred virtues, particularly through the methods which are now in common use by Boy Scouts, placing emphasis upon the Scout Oath and Scout Law for character development, citizenship training and physical fitness."

It is our opinion that the Pine Tree Council, Inc., is a "Charitable organization" under T., 34, §5, its funds being received primarily from public and private charity and expended for charitable purposes, i.e., the training and education of an indefinite number of boys in self-reliance, citizenship, patriotism, physical fitness, etc.

Subjecting the Lake Pine Association to the two criteria produces the following:

The Lake Pine Association is controlled by an Odd Fellows and Rebekah Lodge and derives its funds from fund raising projects which do not entail public and private donations, but involve a quid pro quo, i.e., public amusement and entertainment, including Beano and Public Suppers, for which an admission fee is charged.

The purposes of the Lake Pine Association are expressed in its Certificate of Incorporation as follows:


"The purposes of said corporation are the charitable, education, social or benevolent purposes in the advancement, protection and betterment of any and all social and civic affairs within the Villages of North Windham and South Windham, Maine, to acquire and control land and building or buildings in the Town of Windham for the primary purpose of providing a meeting place for Lake Shore Lodge No. 5 and Pinea Rebekah Lodge No. 71 of the Independent Order of Odd Fellows and to provide a meeting place for social and civic activities within the Villages of North Windham and South Windham, Maine." [Emphasis supplied]

It is our opinion that the Lake Pine Association does not qualify as a "charitable organization" under T., 34, §5, since its funds are derived primarily from running projects involving furnishing a service or a product for a consideration, and not from any public or private donations. Further, its purposes are not entirely "charitable," as that term is legally defined, but involve private advantage, inasmuch, as an expressed primary purpose is the maintenance and use of the buildings sought to be improved as a meeting place for an Odd Fellows and Rebekah Lodge. The use of the word "social" in the purposes as stated, expresses a purpose not considered to be "charitable."

This opinion demonstrates the legal character of a "charitable organization" as contemplated by the Statute in question and provides a definition applicable in instances of requests for assistance in the improvement of property owned by "charitable organizations." It should be noted, however, that it is discretionary with the Department of Mental Health and Corrections, as to whether it will, or will not, furnish assistance to an organization falling within the legal definition.

Note:

Information relating to the manner in which funds are obtained by these organizations was received from the Scout Executive, Pine Tree Council, Inc., Boy Scouts of America and from the Grand Secretary, Grand Lodge of Maine, Independent Order of Odd Fellows.


Courtland D. Perry
Assistant Attorney General

cc: Walter F. Ulmer, Commissioner
Allan L. Robbins, Warden, MSP