

# MAINE STATE LEGISLATURE

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August 22, 1967

To: Ernest H. Johnson, State Tax Assessor

From: James M. Cohen, Assistant *JMC* Attorney General

Subject: Guilford Development Corporation - Exemption as Charitable Institution

**FACTS:**

On October 7, 1964, a corporation was organized in Guilford, Maine under the non-stock provisions of the laws of this State. The original purposes of the Guilford Development Corporation provide:

- (P.1) The primary purpose of this Corporation is to promote better living standards in the Town of Guilford, Maine, and surrounding area, to promote civic improvements therein, and to foster and preserve the free enterprise system. This Corporation shall not be conducted for profit nor shall any member, officer or director or any other individual receive profit from the operations of this Corporation's affairs or business.
- (P.2) To acquire by purchase, lease, exchange or otherwise, land and real estate or any interest therein and to erect, construct, alter, repair, maintain and improve buildings and other structures with full power to own, hold, buy, sell, lease, mortgage and acquire all kinds of property, real and personal, necessary or incidental to carrying out any of the foregoing purposes herein.
- (P.3) To foster, encourage and ascertain the location settlement and re-settlement of industry, manufacturing and other business enterprises within the town of Guilford, Maine.
- (P.4) Generally to undertake and engage in, transact and carry on any and all kinds of business that may be lawfully carried on by corporations organized and existing under Chapter 54 of the Revised Statutes of Maine, Sections 1 to 16 inclusive and acts amendatory thereto provided, however, that nothing in these purposes shall authorize the corporation to conduct or transact any banking or insurance business or any purposes of function expressly prohibited for such corporations under the General Corporate Statute of the Laws of Maine.

In May of 1965, the purposes of the Guilford Development Corporation were enlarged, as follows:

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(P.5) To own, construct, finance and operate housing for senior citizens pursuant to the provisions of Title V of The Housing Act of 1949, as amended (42 U.S.C. § 1485(a)).

Subsequently, in January, 1967, the purposes were again amended, by deleting all (P.1,3,4) except that relating to senior citizens (P.5) and that relating to acquisition of property (P.2) and providing the following:

This Corporation shall not be conducted for profit and no part of the net earnings of this Corporation shall inure to the benefit of any private shareholder or individual. Upon dissolution of the Corporation any funds remaining after the payment of debts and other liabilities shall be paid over to the town of Guilford, Maine.

The Secretary of the Department of Health, Education and Welfare is authorized by 42 U.S.C. § 1485(a) "to make loans to private non-profit corporations and consumer cooperatives to provide rental housing and related facilities for elderly persons and elderly families of low or moderate income in rural areas...."

Housing units have been built by the Corporation with loans from the Federal Government and are rented for \$80. to \$100. per month.

The Tax Assessors of the Town of Guilford have denied a request for tax exemption by the Guilford Development Corporation as a benevolent and charitable institution within 36 M.R.S.A. § 652.

QUESTION:

Whether Guilford Development Corporation is a benevolent and charitable institution entitled to an exemption under 36 M.R.S.A. § 652.

ANSWER:

No.

OPINION:

Questions of tax exemptions must necessitate repetition of the clear and often restated maxim that the rule is to tax, not to exempt as exemption is the exception. Only if clearly relieved from the burden of taxation by Statute can property obtain the position of the few which are so privileged. Taxation attempts to equalize the financial burdens of government among all; only for public policy purposes, as expressed through Constitution or Statutes, are some relieved of this burden.

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An exemption is claimed by the Guilford Development Corporation under §652 of Title 36 as a "benevolent and charitable" corporation. The question has been presented to the State Tax Assessor, who is empowered to supervise "the administration of the assessment and taxation laws of the State" pursuant to 36 M.R.S.A. §201 and for the possible utilization of the authority conferred by §384. Originally sounding like that of an industrial development corporation, the certificate of organization was amended so that the sole purpose of the corporation is now "to own, construct, finance and operate housing for senior citizens.. .." with the aid of Federal loans pursuant of the Federal Farm Housing Law of Title 42.

No problem exists as to the non-profit characteristics of the corporation, so that the sole question is whether it is, within the scope of the taxing statutes, a charitable corporation. It is not necessary to discuss the use of the word "benevolent" as it is regarded as synonymous with charitable in this section. Banger v. Masonic Lodge, 73 Me. 428, 435.

The following are definitions of "charitable" and "charity":

...in order to be charitable...an institution must be organized and conducted to perform some service of public good or welfare, and the public service to be performed must be obligatory. (84 C.J.S. Taxation §282 p. 543)

'charity' is not restricted to the relief of the sick or indigent, but extends to other forms of philanthropy or public beneficence, such as practical enterprises for the good of humanity operated at moderate cost to the beneficiaries, or enterprises operated for the general improvement and happiness of mankind as used in such statutes, it has been defined as an organization or institution engaged in the free assistance of the poor, incapacitated, distressed, etc., and under this definition the characteristics of an organized charity are whatever it does for others it does free of charge, or, at least, so nearly free of charge as to make the charges nominal or negligible, and that those to whom it renders help or services are those who are unable to provide themselves with what the institution provides for them, that is, they are legitimate subjects of charity. (84 C.J.S. Taxation p. 544)

"A charity in the legal sense, may be more freely 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

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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 burden of government." (Bates v. Schillinger, 28 Me. 14, reaffirming the Jackson v. Phillips, 14 Allen 539, 550 definition adopted earlier by the court),

Charity in its legal sense has its origin in gift and bounty. It has been well defined as "whatever is given for the love of God, or the love of your neighbor in the catholic and universal sense; given from these motives and to these ends, free from the strain or taint of every consideration that is personal, private or selfish. Guld v. Washington Hospital, 93 U.S. 311.

"It is the source whence the funds are derived, and not the purpose to which they are dedicated, which constitutes the use charitable." If derived from the gift of the Government or a private gift for improving a town, they are charitable. But where a fund is wholly derived from rates and assessments, being in no respect derived from bounty or charity, it is not charitable. (Cites omitted) (Clement v. L'Institut, 95 Me. 493, 496).

"A good charitable use is public...not in the sense that it must be executed openly and in public, but in the sense of being so general and indefinite in its objects as to be deemed of common and public benefit. Each individual immediately benefited may be private, and the charity may be distributed in private and by a private hand. It is public in its general scope and purpose, and becomes definite and private only after the individual objects have been selected." (Banger v. Masonic Lodge, 73 Me. 428).

It should be remembered that a non-profit corporation is not necessarily a charitable one. To be charitable, certain factors must exist. These include the source of funds, the service to be provided or purpose of the expenditure, and the nature of the recipient.

Guilford Development Corporation, apparently is funded by loans from the Federal Government. Since the rentals are \$80-100 a month, the indication is that the tenants are not

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indigent.

An element of a charitable use is a gift or the relief of a burden, such as the physical burden of the recipient or the responsibility of a governmental body in supporting the needy. A legitimate subject of charity is missing. There is no recognizable philanthropic purpose. Granted, an organization has been formed by civic minded individuals, but there is no legally recognized charitable use to be found.

To illustrate this conclusion is the case of Dalup Housing Corporation v. Finnegan, 85 F. Supp. 220 (Mo.) in which the plaintiff claimed exemption from Federal Income Tax as a charitable institution. The corporation had acquired land from the Federal Government for the purpose of reselling it to sharecroppers. The purposes of the corporation were "to aid destitute and low income persons and families in the purchase or rental of real estate and personal property; to assist said families in connection with the operation and maintenance of said property; to manage said property and do all things in connection therewith necessary for its preservation, reconstruction or maintenance until said families are able to maintain, to operate, and to own said property independently of any help from this Corporation. In that case, the non-profit corporation was actually assisting destitute share-croppers to establish themselves in life and relieving the government from the burden of public assistance.

The Corporation here is providing housing to a special group, namely the elderly, who have moved to a centrally located housing area with other families of a similar age group. The rent in some cases could be equal to or higher than the cost of their private ownership of property. There is no indication that if a tenant were unable to pay his rent, he would not be evicted or that he would not be denied a unit if unable to pay any rent.

Although the Corporation is deemed to be "non-profit", the venture necessitates the payment of rent to generate income to repay the initial or subsequent loan, to help maintain the condition of the property, make improvements or additions. The operation is not supported by governmental grants or private donations. Neither in the conventional or legal sense can Guilford Development Corporation be classified as "charitable".

It might be pointed out that the Legislature has provided in Title 30, Ch. 329, for the creation of Municipal Housing Authorities where the need exists, to provide safe or sanitary housing accommodations for low income groups. The property of such authorities is public, used for essential public and governmental purposes and is tax exempt.

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The Town of Guilford apparently has not seen the need for such an authority. Therefore it may be assumed that the need for housing for needy elderly citizens does not exist in that town.

The Tax Assessors of Guilford properly assessed a tax against the Guilford Development Corporation.