

MINUTES OF THE Senate COMMITTEE ON Assessment and Taxation

The meeting was called to order by Senator Fred A. Kerr at
Chairperson

11:00 a.m. ~~xxx~~ on Wednesday, February 12, 1986 in room 526-S of the Capitol.

All members were present ~~xxxxx~~:

Committee staff present:

Tom Severn, Research Department
Melinda Hanson, Research Department
LaVonne Mumert, Secretary to the Committee

Conferees appearing before the committee:

Fred Weaver, Board of Tax Appeals
Keith Farrar, Board of Tax Appeals

S.B. 400 - Parsonages exempted from property taxation

An amendment drawn up by the Revisor, with the assistance of the Board of Tax Appeals, was distributed to the Committee (Attachment 1).

Fred Weaver said the Board would interpret "church society" to mean any organized group that is organized for the purpose of worshipping a higher body or person. Mr. Weaver feels that attempting to further define a church could lead to state v. church conflicts and constitutionality questions. He noted that the wording in the amendment is consistent with the language of the old statutes which exempted church parsonages. Mr. Weaver agreed with Senator Kerr that the proposed amendment is consistent with the Board's rulings before the court case. In response to a question from Senator Allen, Mr. Weaver said that he is confident that the amendment is going to address the issue of what is usually considered to be the "organized churches" in the state. He agreed with Senator Allen that there is a very fine line between "legitimate" church organizations and organizations simply interested in tax exemption.

Keith Farrar advised that the term "church society" was used in both the 1909 and 1929 statutes regarding parsonages.

Senator Karr asked about churches that might have several ministers. Mr. Weaver said there are definitions, such as Webster's dictionary, which give a specific description of what a minister is. He observed that there could be more than one minister who would be eligible for a parsonage exemption in a larger church, but this would be limited to those clergymen actually practicing and administering church ordinances. Senator Karr questioned about ministers of rural churches. Mr. Weaver responded that, if they are part-time, it will be a "judgment call" by the Board.

Senator Allen moved that the amendment to S.B. 400 be adopted (see Attachment 1). Senator Thiessen seconded the motion, and the motion carried. Senator Allen moved that the bill, as amended, be recommended favorably for passage. Senator Mulich seconded the motion, and the motion carried. Senator Salisbury requested that her "no" vote be recorded.

S.B. 450 - Property tax exemption used for more than one exempt purpose

Fred Weaver reviewed his written statement (Attachment 2). He stressed that problems occur when a charitable organization goes beyond being non-profit. Mr. Weaver discussed decisions in several recent cases: Center Industries (Attachment 3), Martin Luther King (Attachment 4) and Heidi and Peter Academy (Attachment 5). Mr. Weaver pointed out the definition of "charitable" as found in the Lutheran Homes and Mason v. Zimmerman cases (Attachment 6). He said that only the actual expenses for use of property can be charged without violating the non-profit criteria. He stated that a sliding scale cannot be used, even under the provisions of S.B. 450. Mr. Weaver feels that if the Legislature wants to exempt certain groups,

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Assessment and Taxation,
room 526-S, Statehouse, at 11:00 a.m./~~p.m.~~ on February 12, 1986

those groups should be specifically listed in the statutes. Senator Burke asked if a tax-exempt entity can use a square-foot basis for charging rent to another tax-exempt entity. Mr. Weaver said that is acceptable at the present time, without S.B. 450. Chairman Kerr asked if it must be specified by law that a non-profit daycare center can operate in a church without the church being subject to property tax. Mr. Weaver replied that it depends on the daycare center and whether it meets the exemptions.

Representative Joan Wagnon advised the Committee that the Shawnee County Appraiser stated that if the Legislature does not take any action with regard to the daycare-church problem, he will move to place those churches on the taxroll.

Fred Weaver said that the entire area of exemptions is being examined by county officials. He pointed out that whenever non-profit groups start competing with private industries, there will be a challenge. Copies of a letter to the Shawnee County Appraiser were distributed (Attachment 7).

Meeting adjourned.

ASSESSMENT AND TAXATION

OBSERVERS
(PLEASE PRINT)

DATE	NAME	ADDRESS	REPRESENTING
2/12/86	George Scobas	431 VAN BUREN	YMCA
2/12/86	Nelda Anderson	421 Van Buren	YMCA
2/12/86	KEITH FARRAR	Topeka	BOTA
	Fred Weaver	Topeka	BOTA
	Jim McBride	TOPEKA	Observer
	EDITH M. BRIDE	TOPEKA	OBSERVER
	Ben Bradley	LAURENCE	KS Assoc Counties
	TREVA POTTER	TOPEKA	NORTHERN NAT. GAS
	Bob Londerholm	Olathe	Ev. Lutheran Church Sam
	MARCIAN H. BAILEY	FAIRWAY	GIRL SCOUTS
	Kathy Wilkin	Topeka	" "
	Earl Gress Starnes	Topeka	Consultation of Churches
	Suzanne Berry	Topeka	Council of Cooperative Churches
	Kathy Graham	Topeka	First Christian Day Care
	Betty Rose	Topeka	First Christian Day Care
	Donna Smith	Topeka	K. BarA.
	Dave Feltus	Topeka	KCCI
	Chip Wheeler	Topeka	Leg. Policy Group
	Elizabeth G. Taylor	Topeka	Advocate for the Education of Young Children
	John Arace	"	115 Home To Army

0045 held or used as an investment even though the income or rentals
0046 received therefrom is used wholly for such literary, educational,
0047 scientific, religious, benevolent or charitable purposes.

0048 *Third.* All moneys and credits belonging exclusively to uni-
0049 versities, colleges, academies or other public schools of any kind,
0050 or to religious, literary, scientific or benevolent and charitable
0051 institutions or associations, appropriated solely to sustain such
0052 institutions or associations, not exceeding in amount or in in-
0053 come arising therefrom the limit prescribed by the charter of
0054 such institution or association.

0055 *Fourth.* The reserve or emergency funds of fraternal benefit
0056 societies authorized to do business under the laws of the state of
0057 Kansas.

0058 *Fifth.* All buildings of private nonprofit universities or col-
0059 leges which are owned and operated by such universities and
0060 colleges as student union buildings and student dormitories.

0061 *Sixth.* All real and tangible personal property actually and
0062 regularly used exclusively by the alumni association associated
0063 by its articles of incorporation with any public or nonprofit
0064 Kansas college or university approved by the Kansas board of
0065 regents to confer academic degrees or with any community
0066 college approved by its board of trustees to grant certificates of
0067 completion of courses or curriculum, to provide accommodations
0068 and services to such college or university or to the alumni, staff
0069 or faculty thereof.

0070 *Seventh.* All parsonages actually and regularly used exclu-
0071 sively as a residence and a place of ministrat[i]on by a minister or
0072 other clergyman of [any] church society who is actually and
0073 regularly engaged in conducting the services and religious min-
0074 istrations of such society, and the land upon which such par-
0075 sonage is located to the extent [of one-half acre]

0076 The provisions of this section shall apply to all taxable years
0077 commencing after December 31, 1983 1985.

0078 Sec. 2. K.S.A. 1985 Supp. 79-201 is hereby repealed.

0079 Sec. 3. This act shall take effect and be in force from and
0080 after its publication in the statute book.

owned by a church society and
occupied and
such

necessary for the accommodation of such parsonage



BOARD OF TAX APPEALS

1030-S, STATE OFFICE BUILDING

Telephone 296-2388 AC—913

TOPEKA, KANSAS 66612-1582

Fred L. Weaver, *Chairman*

Dallas E. Crable, *Member*

John P. Bennett, *Member*

Robert C. Henry, *Member*

Keith Farrar, *Member*

MEMORANDUM

TO: Joint Committee on Assessment and Taxation

FROM: Board of Tax Appeals

DATE: February 12, 1986

RE: Senate Bill 450

Mr Chairman members of the Committee.

After hearing the supporters of this bill I believe we should first discuss the situation as it now exists with the Board of Tax Appeals decisions. This proposal would add very little if any to what the Board has already been doing. The Board of Tax Appeals has followed a practice for sometime of allowing use of property by two exempt entities even though there is a court case which if followed would deny such exemption. I brought along some recent board orders which demonstrate how flexible the Board of Tax Appeals has been.

I know of no problem where the church allows Boy Scouts, Girl Scouts and similar exempt organizations to use its facilities. I do think however, I should explain the real reason for the denial of Jewish Family Service. It was the sixty dollars an hour fee charged to some of its clients and a strong challenge from the county that the revenues from those fees actually accounted for much more than 4% of the cost of operation of the property for which the exemption was requested. I believe the fees accounted for 4% of their total operations.

The Salvation Army denial had many aspects which created their problem such as weight watchers and other commercial operations, even the lease of the property to city could be a problem since it makes the property held partially as an investment. A violation of 79-201 Second. In this case there was another problem, lack of evidence as to some uses.

Perhaps I should bring to your attention some of the instances I am aware of which indicate just some of the problems with non-profit charitable or religious corp., Red Cross meals program in Coffeyville area, audit showed \$90,000 profit. The Director had a new car furnished, money was set aside for the purpose of building a new facility to house a swimming pool among other things.

A religious organization owning bulldozers, backhoes, trucks, cement trucks, and a cement batch plant.

A parsonage with a retail commercial enterprise with the profit enuring benefit to the Pastor and his wife.

The Board has spent many hours studying the language proposed on lines 0050-0054 of Senate Bill 450 and has concluded this language will probably create more problems than it will solve. There is no problem with reimbursement for literary, educational, scientific or religious unless someone decides to make a profit venture out of renting such property and unless you intend to extend their exemption to include commercial enterprise those categories of property ought to be left out of this language.

The real problem here is charity or charitable purposes. (When non-profit corporations go beyond the costs of operation with their charges they violate their own charter as well as the exemption statutes. This statement includes all categories of exemption.)

What is charity and can the Board of Tax Appeals take a broader interpretation, lets look at two Supreme Court cases that are the guides for the Board on this issue.

Can the Board of Tax Appeals take a broader interpretation than the Court? It has and does it routinely within limits but it is questioned on its decisions quite often. Our recent decision allowing a doctor's paging system at a local hospital to be exempt is now being questioned.

I am aware that the revisors office has advised some of you that the Board has disgression in determining the definitions of charity as used in the statutes vs that used in the constiution. I am providing you with information on two cases which we feel can clarify our interpretation.

Finally, it is the Board of Tax Appeals position that if you want to exempt non-profit mental health facilities that's what you should do, say it. If you want to exempt non-profit day care then say it. Language such as that in Senate Bill 450 will only hasten a court challenge and it is our opinion that such language will not meet the constitutional test. We are just as strong in our belief that a straight forward exemption as we suggest is clearly within the authority of the legislature ^{as} long as you do not discriminate within a class of property.

BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE APPLICATION
OF CENTER INDUSTRIES FOR EXEMPTION
FROM AD VALOREM TAXATION IN SEDGWICK
COUNTY, KANSAS.

Docket No. 2554-84-TX

O R D E R

Now, on this 4th day of December, 1985, the above captioned matter comes on for consideration and decision by the Board of Tax Appeals of the State of Kansas.

The Board conducted a hearing in this matter on June 5, 1985. The Board also toured the applicant's facility located at 2505 Custer, Wichita, Kansas. The Board has reviewed the stipulation of facts submitted by the parties together with a memorandum and arguments submitted by the applicant. Having considered all of the foregoing, the Board finds and concludes as follows:

1. The Board has jurisdiction of the subject matter and of the parties hereto, a proper tax exemption application having been filed, pursuant to K.S.A. 79-213.
2. The subject matter of this application for exemption is described as follows:

1984 GMC, ID #1GTCC14H4ES511202 &
1975 Ford, ID #F37YCV68541.

3. The Board finds and concludes that the aforescribed property should be exempted from ad valorem taxation for the reason that said property is being exclusively used for governmental, charitable and educational purposes, in that it is regularly and exclusively used in connection with the training of handicapped individuals to be productive self-sufficient members of society. The applicant's facility also provides educational opportunities to Wichita State University Engineering students and research individuals connected with the Cerebral Palsy Research Foundation in learning and developing adaptations for a working environment to accommodate handicapped individuals. The applicant's property is also used for charitable purposes in that it is providing a meaningful work environment to individuals who would otherwise be unemployable because of their handicaps. Finally, the applicant's property is being used for governmental purposes because governmental units contribute to the financing of this organization by way of grants and tax monies. Without a facility of this type, some of the individuals participating in the program would have to be supported directly by governmental agencies, and thus, the applicant's facility reduces the cost of caring for these individuals which the state is obligated to pay.

While the applicant's property may not qualify for exemption based solely upon one of the above enumerated uses, when viewed jointly, the Board concludes the

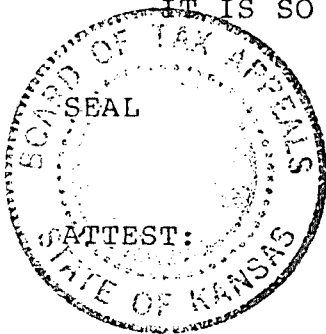
applicant's facility is being exclusively used for exemptible purposes stated in K.S.A. 79-201 Second and Article 11, Section 1 of the Kansas Constitution.

IT IS, THEREFORE, BY THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS, CONSIDERED AND ORDERED that, for the reasons more fully set forth herein, the application is granted and the aforescribed property is exempted from ad valorem taxation for the period January 1, 1984 through December 31, 1984 and so long thereafter as owned by the applicant and used for exemptible purposes. IT IS FURTHER ORDERED that any 1984 or 1985 taxes assessed to the aforescribed property be abated and/or refunded.

The appropriate Sedgwick county officials are hereby authorized and directed to correct their books and records in accordance with the findings and conclusions set forth herein.

If any party to this appeal feels aggrieved by this decision, they may file a written request for a re-hearing with this Board. The written request must be received within thirty (30) days of the certification date of this Order. If, at the end of thirty days the Board has not received a written request for a re-hearing, this Order will become a final Order from which no further appeal is available.

IT IS SO ORDERED.



CERTIFIED COPY:

APPLICANT _____
APPLICANT'S ATTY _____
CO. CLERK _____
CO. ASSESSOR _____
CO. ATTY/COUNSELOR _____
CO. COMM. _____
CO. TREAS. _____

DATE 12-6-85

Linda Ann Terrill
LINDA ANN TERRILL
SECRETARY

David C. Cunningham
DAVID C. CUNNINGHAM
ATTORNEY

Fred L. Weaver
FRED L. WEAVER, CHAIRMAN

Dallas E. Crable
DALLAS E. CRABLE, MEMBER

DISSENT
JOHN P. BENNETT, MEMBER

Robert C. Henry
ROBERT C. HENRY, MEMBER

Keith Farrar
KEITH FARRAR, MEMBER

BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE APPLICATION
OF MARTIN LUTHER KING JR. CHILD CARE
CENTER ASSOCIATION FOR EXEMPTION
FROM AD VALOREM TAXATION IN SALINE
COUNTY, KANSAS.

Docket No. 1129-84-TX

O R D E R

Now, on this 6th day of November, 1985, the above captioned matter comes on for consideration and decision by the Board of Tax Appeals of the State of Kansas.

The Board conducted a hearing in this matter on August 13, 1985. After considering all of the evidence presented thereat, as well as the evidence contained within the file, the Board finds and concludes as follows:

1. The Board has jurisdiction over the parties and the subject matter of this proceeding, pursuant to K.S.A. 79-213.
2. The subject matter of this tax exemption application is described as follows:

Lots 20, 22 and 24 in Block 23 of Episcopal Military Institute Addition (acquired June 10, 1980), and

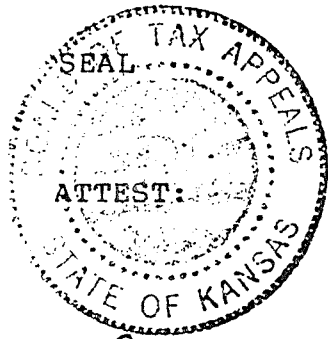
Lots 14, 16 & 18, Block 23 in the Episcopal Military Institute Addition (acquired September 21, 1983), all being in the City of Salina, Saline County, Kansas.
3. The applicant has requested the aforescribed property be exempted from ad valorem taxation for the reason the property is being used exclusively for educational purposes, in that it is regularly and exclusively used for supervised educational programs and child development activities. The county has recommended the exemption.
4. The Board finds and concludes that this property should be exempted since the evidence established that it is being exclusively used for educational purposes pursuant to K.S.A. 79-201 Second and Article 11, Section 1 of the Kansas Constitution. The Board finds that the applicant acquired these properties on June 10, 1980 and September 21, 1983, and began using them for exempt purposes on July 18, 1983 and September 21, 1983 respectively. The applicant has requested the exemptions be granted from the dates of first exempt use and forward.

IT IS, THEREFORE, BY THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS, CONSIDERED AND ORDERED that, for the reasons more fully set forth herein, the application is granted and the aforescribed properties are exempted from July 18, 1983 and September 21, 1983 through December 31, 1985 and so long thereafter as owned by the applicant and used exclusively for educational purposes. IT IS FURTHER ORDERED that any taxes assessed to these properties for the periods noted herein be abated and/or refunded with said refunds not to extend beyond 1981.

The appropriate Saline county officials are hereby authorized and directed to correct their books and records in accordance with the findings and conclusions set forth herein.

If any party to this appeal feels aggrieved by this decision, they may file a written request for a re-hearing with this Board. The written request must be received within thirty (30) days of the certification date of this Order. If, at the end of thirty days the Board has not received a written request for a re-hearing, this Order will become a final Order from which no further appeal is available.

IT IS SO ORDERED.



CERTIFIED COPY:
 APPLICANT
 APPLICANT'S ATTY
 CO. CLERK
 CO. ASSESSOR
 CO. ATTY/COUNSELOR
 CO. COMM.
 CO. TREAS.

Fred L. Weaver
 FRED L. WEAVER, CHAIRMAN

Dallas E. Crable
 DALLAS E. CRABLE, MEMBER

DISSENTING

John P. Bennett, MEMBER

Robert C. Henry
 ROBERT C. HENRY, MEMBER

Keith Farrar
 KEITH FARRAR, MEMBER

Linda Ann Terrill
 LINDA ANN TERRILL
 SECRETARY

David C. Cunningham
 DAVID C. CUNNINGHAM
 ATTORNEY

DATE 11-12-85

OFFICE OF THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

I, Linda Ann Terrill, Secretary of the Board of Tax Appeals of the State of Kansas, do hereby certify that the above and foregoing is a true and correct copy of Order No. 1129-84-TX made by said Board, as the same appears and is a matter of record in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the official seal of the Board of Tax Appeals at Topeka, Kansas, this 12th day of November, 1985.

Linda Ann Terrill
 SECRETARY



Heidi and Peter Academy Day Care

Day care for children of working parents operated out of a church.

Children six weeks to seven years of age.

Maximum of 96 children per license from Kansas Department of Health and Environment.

Open 6:30 a.m. to 6:30 p.m.

As of early 1984 the fee schedule was as follows:

\$260.00 per month for infants

\$205.00 per month for pre-school children

At time of hearing total enrollment 109. Assuming all children being charged the lowest fee of \$205.00 per month, the total revenue would be \$22,345.00 per month.

Day care pays church \$350.00 per month for use of facility.

BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE APPLICATION
OF HEIDE & PETER ACADEMY DAY CARE
FOR EXEMPTION FROM AD VALOREM TAXATION
IN SHAWNEE COUNTY, KANSAS.

Docket No. 4624-83-TX

O R D E R

Now, on this 25th day of July, 1984, the above captioned matter comes on for consideration and decision by the Board of Tax Appeals of the State of Kansas.

The Board conducted a hearing in this matter on February 9, 1984. After considering all of the evidence presented thereat, and being fully advised in the premises, the Board finds that the application herein for exemption from ad valorem taxation on the following described property, to-wit:

1984 Chevrolet, 1GAGG35M1E710574

must be denied because the application clearly states that the subject property is not being used exclusively for religious or educational purposes.

Testimony at the hearing indicated the vehicle is used in the operation of this day care facility to transport children to and from school and on field trips. While the center is operated on a not-for-profit basis, it is still in competition with "non-exempt" day care facilities throughout Kansas. Testimony indicated that tuition fees, while not actually meeting the cost of operation, are comparable to those of other day care facilities. The Board acknowledges the applicant's programs provide some religious and educational training; however, the center is operated primarily for the benefit of working parents who require day time care for their children and prefer a structured learning environment. Because of the use of this property as a day care facility, there is not an exclusive use for religious or educational purposes. The exemption statutes require that there be an exclusive use before an exemption can be granted, and the phrase, "used exclusively," in our state's constitution and statutes means that the use made of the property sought to be exempted from taxation must be only, solely, and purely for the purposes stated, and without participation in any other use. See Seventh Day Adventist v. Board of County Commissioners, 211 Kan. 683, 508 P.2d 911 (1973). In the instant case, no exclusive use can be found.

Since the subject property is not being exclusively used for religious or educational purposes as contended by the taxpayer it does not qualify for exemption under K.S.A. 79-201 Second, as amended, or Article 11, Section 1 of the Kansas Constitution.

IT IS, THEREFORE, BY THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS, CONSIDERED AND ORDERED that for the reasons more fully set forth herein, the application must be, and the same is hereby, denied.

No. 46,502

LUTHERAN HOME, INC., a Corporation, *Plaintiff-Appellee*, v. BOARD OF COUNTY COMMISSIONERS OF DICKINSON COUNTY, KANSAS: DR. L. G. HEINS, ELMER S. ANDERSON, ELMER JONES, AS COMMISSIONERS THEREOF; MARIE A. SULLIVAN, COUNTY CLERK OF DICKINSON COUNTY, KANSAS: MARIE A. SULLIVAN, COUNTY ASSESSOR OF DICKINSON COUNTY, KANSAS: and VIVIAN L. GORMLEY N/B/M VIVIAN L. DETRICK, TREASURER OF DICKINSON COUNTY: RONALD S. DWYER, AS DIRECTOR OF PROPERTY VALUATION OF THE STATE OF KANSAS, *Defendants-Appellants*.

(505 P. 2d 1118)

SYLLABUS BY THE COURT

1. TAXATION—*Exemptions—Strict Construction*. Constitutional and statutory provisions exempting property from taxation are to be strictly construed.
2. SAME—*Exemptions—Burden of Proof*. The burden of establishing exemption from taxation is on the one claiming it.
3. SAME—*Exemptions—Exclusive Use*. The exemption from taxation depends solely upon the exclusive use made of the property and not upon the ownership or the character, charitable or otherwise, of the owner.
4. CHARITIES—*Tax Exemption—Test*. The test of whether an enterprise is charitable for ad valorem tax purposes is whether its property is used exclusively to carry out a purpose recognized in law as charitable.
5. SAME—*Exemption—How Property Used*. The question is not whether the property is used partly or even largely for the purposes stated in the exemption provisions, but whether it is used exclusively for those purposes.
6. TAXATION—*Term "Benevolent" Synonymous With "Charitable"*. The term "benevolent" as used in article 11, section 1, of the Kansas Constitution and in K. S. A. 79-201 is entirely synonymous with "charitable."
7. SAME—*What Charitable Denotes*. "Charitable", as used in such constitutional and statutory provisions, denotes gifts to the poor or positive steps taken to relieve distress and suffering of those unable to help themselves.
8. CHARITIES—*Characteristics of an Organized Charity*. The characteristics of an organized charity are that 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.

Appeal from Dickinson district court; WALTER E. HEMBROW, judge. Opinion filed February 5, 1973. Reversed and remanded with directions.

Max M. Hinkle, of Abilene, argued the cause, and William L. Winkley, of Abilene, was with him on the brief for the appellants.

John F. Christner, of Abilene, argued the cause, and W. H. Alward, of Herington, was with him on the brief for the appellee.

its own particular facts or circumstances. (*Topeka Presbyterian Manor v. Board of County Commissioners*, supra.) In recent years the principles of charitable exemption from taxation have been given close scrutiny and serious consideration by both federal and state courts throughout this country. There has been an increasing trend toward the tightening of exemptions and a return to the more strict view. (Annotations in 37 A. L. R. 3d 565, 37 A. L. R. 3d 1191, and 45 A. L. R. 3d 610; *United Presby. v. Co. Comm.*, (1969) 167 Colo. 485, 448 P. 2d 967; *Presbyterian Homes v. Bradenton*, (Fla. 1966) 190 So. 2d 771; *Wesley Willows v. Munson*, (1969) 43 Ill. 2d 203, 251 N. E. 2d 249; *Paraclete Manor of Kansas City v. State Tax Com'n.*, (Mo. 1969) 447 S. W. 2d 311; *County of Douglas v. OEA Senior Citizens, Inc.*, (1961) 172 Neb. 696, 111 N. W. 2d 719; *The Presbyterian Homes v. Division of Tax Appeals*, (1969) 55 N. J. 275, 261 A. 2d 143; *Haines v. St. Petersburg Methodist Home, Inc.*, (Fla. 1965) 173 So. 2d 176; *Ruston Hospital, Inc. v. Riser*, (La. 1966) 191 So. 2d 665, *Friendsview Manor v. Tax Com.*, (1966) 247 Or. 94, 420 P. 2d 77; *Friendship Manor Corporation v. Tax Commission*, 26 Utah 2d 227, 487 P. 2d 1272; *Martin Luther Homes v. County of Los Angeles*, 12 Cal. App. 3d 205, 90 Cal. Rptr. 524; *Stanbro v. Bapt. Home Ass'n*, 172 Colo. 572, 475 P. 2d 23.)

[We have reconsidered all of the Kansas decisions along with cases from other jurisdictions. We have concluded that the concept of "charity" as set forth in *Mason v. Zimmerman*, supra, should be applied in this case and in future litigation in this state. In *Mason* we said that "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. To have charity there must be a gift from one who has to one who has not. Unless there is a gift, there can be no charity.]

As pointed out above "charity" is sometimes used interchangeably with "benevolence" and "beneficence" in describing good-will, or a helpful attitude or kindly acts, but "charity" is commonly understood more objectively as denoting gifts to the poor or positive steps taken to relieve distress and suffering of those unable to help themselves. It is the latter concept of "charity" and not the former, which is more consistent with our established rule that constitutional and statutory provisions which exempt property from taxation are to be strictly construed.

that all the property or funds, real, personal, or mixed, that may be received, held or appropriated by or for said association, for the exclusive purpose of religion or education, including a cemetery not exceeding forty acres, shall be forever exempt from taxation.' Held, that a dwelling house owned by the association, which was devised to it for the exclusive purpose of education, is not exempt from taxation, under the provisions of the charter of the association, if not used exclusively for religious or educational purposes, although the house is rented to a tenant, who pays rent therefor, and such rent is appropriated by the association exclusively for the purpose of education." (Syllabus.)

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Following these decisions, the provisions of section 1 of article 11 of the constitution of Kansas that "all property used exclusively for . . . benevolent and charitable purposes . . . shall be exempt from taxation" must be strictly construed, as should the similar provision of section 2 of chapter 408 of the Laws of 1907. So construed, these provisions exempt from taxation only such property as is used exclusively, directly and immediately in dispensing charity. "Charity" is a gift to promote the welfare of others in need, and the term "charitable," as used in such constitutional and statutory provisions, means "intended for charity," and the word "benevolent," as used therein, is entirely synonymous with "charitable."

The findings show that the property in question is used as an office building for the principal officers of the grand lodge of Masons of Kansas, which "has general supervision and control of the affairs of the subordinate, or local, Masonic lodges of the state." It appears, therefore, that the property in question is used indirectly in furthering the charities dispensed by or through the grand lodge, such as the Kansas Masonic Home and other charities. It is not, however, used directly, immediately and exclusively in dispensing charity. It follows that the court erred in denying the motion for a new trial, and in rendering judgment for the plaintiffs.

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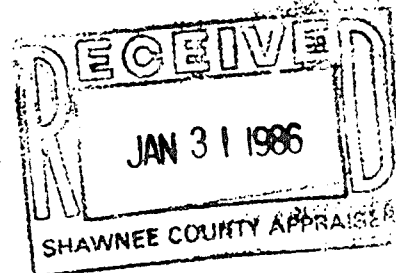
LAW OFFICES OF
FRIEDEN & FORBES
CAPITOL TOWER
400 S.W. 8TH STREET SUITE 409

JOHN C. FRIEDEN
ANDALL J. FORBES

P.O. BOX 639
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AREA CODE 913
232-7266

January 29, 1986



Mr. Gary Smith
Shawnee County Appraiser
Shawnee County Courthouse
Topeka, KS

Re: St. Francis Hospital and Medical Center
Answer Topeka

Dear Mr. Smith:

My firm represents a local business called Answer Topeka. Answer Topeka is in the business of providing an answering service and call forwarding service. Many of the company's clients are physicians. As with all non-charitable, for-profit businesses, my client pays all applicable taxes, including property taxes.

Recently, my client has become very concerned by the announcement that St. Francis Hospital intends to provide a similar service and has targeted the physician market. It is our understanding that this competing business will be operated on-site at the hospital, with hospital equipment and personnel. As you can imagine, St. Francis Hospital will have a major competitive advantage because of its tax-exempt status. We feel this is not only unfair but illegal.

We believe that this system is not a necessary part of the hospital function, as evidenced by the fact that hospitals have never provided it and other local hospitals do not provide it. We believe it is clearly an attempt by St. Francis to improve its profitability by operating a profitable service at the expense of private business, which does not enjoy a tax-exempt status.

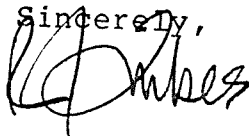
We feel that for the same reasons churches which have day care activities on premises should lose their tax exempt status, so should St. Francis Hospital when it implements the phone answering and call forwarding service. If it does not, the county will not only be deprived of substantial tax revenues it is entitled to, but businesses in this community will severely suffer unfairly.

Letter Mr. Gary Smith
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Page 2

We applaud your previous stands on tax-exempt property, even in the face of controversy, and sincerely hope you will be just as courageous and dedicated in this situation.

Thank you for your attention of this matter.

Sincerely,



Randall J. Forbes
FRIEDEN & FORBES

RJF/jlm

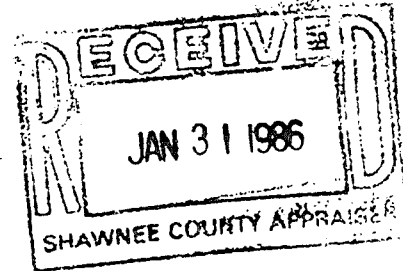
cc: Craig Woodbury

LAW OFFICES OF
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JOHN C. FRIEDEN
RANDALL J. FORBES

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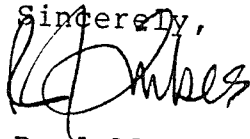
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