

Approved March 17, 1988

Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT & TAXATION

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

11:00 a.m. ~~PM~~ on March 16, 1988 in room 519-S of the Capitol.

All members were present except:
Senator Bud Burke

Committee staff present:

Tom Severn, Research
Chris Courtwright, Research
Don Hayward, Revisor's Office
Sue Pettet, Secretary to the Committee

Conferees appearing before the committee:

Mrs. Harold Schutter, Pres., Topeka Women's Club
Bob Kelly, Ks. Independent College Assoc.
Ron Hein, Counsel for Complete Property Management
Bob O'Connor, Attorney for YMCA
Eugene Hackler, Hackler Law Firm, Olathe

HOUSE BILL 2651

Chairman Kerr called the meeting to order and said that the hearing on H.B. 2651 would continue.

Mrs. Harold Schutter testified in support of H.B. 2651. (Att. 1) She stated that the Topeka Women's Club is over 100 years old and enjoyed tax exemption status until 1982 when the club relocated. She stated that this taxation is difficult to pay and they do not feel they are a "for profit" business.

Bob Kelly testified in support of H.B. 2651. (Att. 2) He stated that the independent colleges wished to propose an amendment to H.B. 2651 to exempt presidential homes owned and operated by private nonprofit colleges. (Att. 2) He stated that there are presently nine college owned presidential homes. In every case, the president was not given an option as to where he could live. The activities conducted at the homes are considered duties of the president.

Ron Hein testified. (Att. 3) He stated that he was legislative counsel for several cooperative townhouse projects for restricted income families. He stated that pursuant to federal law, these projects are not able to be sold for the purpose of making a profit during the 20 year period of time during which the projects are restricted for low income purposes. He asked for an amendment to H.B. 2651 to provide for relief for these housing projects only for the period of time that they are restricted in the saleability of the projects and are restricted to low income residents. (Copy of proposed amendment is in Att. 3)

Bob O'Connor testified in support of H.B. 2651. (Att. 4) He stated that one feature of H.B. 2651 defines "humanitarian services" exemption category. Another section is elimination of the new definition and application of "investment income" which he felt the BOTA had recently created in order to deny traditional exemptions to most of those organizations which have lost their exemption in recent years. He stated that he felt any organization that had previously testified on behalf of the not-for-profit or humanitarian service exemptions could most probably expect to be put on the tax roles. He stated that he felt "municipal use" should be exempt.

Eugene Hackler testified. (Att. 5) He stated that the Board of Tax Appeals sits as a judicial body ruling on tax exemption matters, similar to a District Court. He said it is not a question of "judgement" or "opinion" such as determining the "value" of property by the Board would be. He said the rulings by the BOTA must be applied statewide, since the exemption statute is of statewide application, to avoid a violation of the "uniform and equal"

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 & TAXATION,
room 519-S Statehouse, at 11:00 a.m./~~p.m.~~ on March 16, 1988

provisions.

Sen. Allen made a motion to adopt the minutes of the March 15 meeting.
Sen. Mulich seconded. Motion carried.

Meeting adjourned.

ASSESSMENT AND TAXATION

OBSERVERS
(PLEASE PRINT)

DATE NAME ADDRESS REPRESENTING

DATE	NAME	ADDRESS	REPRESENTING
3/14/88	KEITH FARRAR	Topeka	BOTA
	JIM DAVIDSON	"	"
✓	Bob Kimmels	Leawood	Is. Cath Conf
"	BOB O'CONNOR	WICHITA	YMCA
"	George Sobae	Topeka	"
"	Jim Duncan	"	"
"	Gene Hackler	Clairton	Salvation Army
"	Pat Barnes	Topeka	KS Motor Car Dealer Assn
	Jim DeHoff	Topeka	KS AFL-CIO
	Kathy J. Magney	Topeka	Mech. Conf. of Kans.
	Patricia P. Smith	Wichita	United Catholic Health Assn. of Kans.
	John H. Holmgren	Topeka	
	Mary Ellen Conlee	Wichita	St. Francis - Wichita
	Lorene Valentine	Wichita	St. Francis - Wichita
	Sam Henderson	" "	" "
	Bob Kelly	Topeka	KS Independent Colleges
	Kope Traut	Topeka	YMCA - Topeka
	Jim Mulbride	Topeka	Observer
	BOB BRADLEY	TOPEKA	KS Assoc of Counties
	MILDRED SCHRADER	TOPEKA	WOMAN'S CLUB
	Dorothy E. Pulliam	Topeka	Woman's Club
	JACK PULLIAM	TOPEKA	WOMAN'S CLUB
	Rony Catches	WICHITA	Boeing
	Rich McKee	Topeka	K.L.A.

TESTIMONY OF MRS. HAROLD D. SCHUTTER
PRESIDENT OF WOMAN'S CLUB OF TOPEKA
ON BEHALF OF HOUSE BILL 2651

Senator Kerr and members of the committee.

I appreciate the opportunity to speak to you this morning on behalf of House Bill 2651.

Please allow me to introduce myself. I am Flora Mae Schutter, president of the Woman's Club of Topeka and I would like to address a problem the club and its members are having.

The Woman's Club of Topeka is nearly 100 years old. In 1897, a group of women decided to incorporate the many small women's organizations of the city into one large one. This would enable them to sponsor much larger projects that could truly benefit the community. That decision resulted in an organization named The Federation of Clubs.

In 1912, the Federation of Clubs became the Federation of Women. Four years later, in 1916, the name was changed to The Woman's Club of Topeka and it is still known by that name today. The Woman's Club was granted a state charter at that time and became incorporated with a seal designed by Merrill Gage.

At this period of time in Topeka, there wasn't a building suitable for the cultural events The Woman's Club was sponsoring and a decision was made to build one. This decision resulted in the four-story building at Ninth and Topeka Blvd, now the home of the State Insurance Department. This building is on the National Historic Register and is nationally recognized for its beauty and architecture.

From the 1920's to the 1970's, The Woman's Club was the

focal center of cultural, educational and religious events and many had their beginnings under the club's sponsorship.

But the 1970's brought changing times and the location at Ninth and Topeka became difficult because of lack of parking space. The Woman's Club board voted to sell the building and locate further from the capitol area. Land was purchased and the move was made to 5221 S.W. West Drive in April 1982.

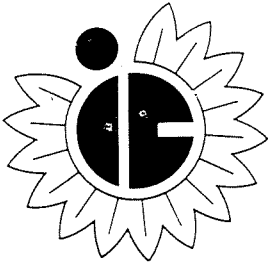
From its inception in 1897, The Woman's Club has been a non-profit organization. Our Constitution and By-Laws say in Article I - "The Woman's Club of Topeka is organized and operated exclusively for the promotion of the social welfare of the community; for the civic betterment and the common good".

At present, we support scholarships for nurses at Washburn and Stormont-Vail Hospital, music scholarships for the Music Department at Washburn and contribute to many other organizations that periodically need funds. We would like to do more.

Our problem is this: After our move to our present location, we were put on the property tax rolls of Shawnee County and classified as a business. This makes our tax bill extremely high, with the prospect of even higher taxes in the near future. Without some relief, the members of The Woman's Club look to the future with some trepidation. We fully support House Bill 2651 as it will help direct our energies to humanitarian purposes rather than meeting tax bills geared to rates for a for-profit business.

In summary, we feel we fit in the humanitarian category of House Bill 2651 and urge its passage. We appreciate anything you as legislators can do to help us in this dilemma. We thank you for allowing us to speak at this hearing.

3/16/88



KANSAS INDEPENDENT COLLEGE ASSOCIATION

Capitol Federal Building, Room 515, Topeka, Kansas 66603

Telephone (913) 235-9877

ROBERT N. KELLY, *Executive Director*

March 16, 1988

Testimony on HB 2651 before Senate Assessment and Taxation Committee

Our colleges wish to propose an amendment to HB 2651 to exempt presidential homes owned and operated by private nonprofit colleges (attached).

Such homes were considered exempt until late January of this year when the Board of Tax Appeals ruled that they were taxable property because they were not used exclusively for educational purposes.

We believe that presidential homes perform several of the same functions as do student unions and student dormitories and should also be exempt. Although primarily residences for presidential families, they serve as locations to entertain students, faculty, trustees, alumni, and communities; as housing for visiting dignitaries and campus and community guests; as meeting places for campus and community organizations; as sites for special and ceremonial meals; and as focal points for campus life. In short, presidential homes can be viewed as warm and dignified substitutes for student unions and student dormitories.

At this time, there are nine college-owned presidential homes. In every case, the president was not given an option as to where he could live. The activities conducted at the presidential homes were considered integral to the missions of the colleges and the duties of the presidents. In this manner, these presidential homes function identically to Regent and Washburn presidential homes that are tax-exempt.

licensed pursuant to K.S.A. 65-501 *et seq.*, and amendments thereto.

Second. All real property, and all tangible personal property, actually and regularly used exclusively for literary, educational, scientific, religious, benevolent or charitable purposes, including property used exclusively for such purposes by more than one agency or organization for one or more of such exempt purposes. This exemption shall not apply to such property, not actually used or occupied for the purposes set forth herein, nor to such property held or used as an investment even though the income or rentals received therefrom is used wholly for such literary, educational, scientific, religious, benevolent or charitable purposes. This exemption shall not be deemed inapplicable to property which would otherwise be exempt pursuant to this paragraph because an agency or organization: (a) Is reimbursed for the provision of services accomplishing the purposes enumerated in this paragraph based upon the ability to pay by the recipient of such services; or (b) is reimbursed for the actual expense of using such property for purposes enumerated in this paragraph; or (c) uses such property for a nonexempt purpose which is minimal in scope and insubstantial in nature if such use is incidental to the exempt purposes of this paragraph; or (d) charges a reasonable fee for admission to cultural or educational activities or permits the use of its property for such activities by a related agency or organization, if any such activity is in furtherance of the purposes of this paragraph.

Third. All moneys and credits belonging exclusively to universities, colleges, academies or other public schools of any kind, or to religious, literary, scientific or benevolent and charitable institutions or associations, appropriated solely to sustain such institutions or associations, not exceeding in amount or in income arising therefrom the limit prescribed by the charter of such institution or association.

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

Fifth. All buildings of private nonprofit universities or col-

leges which are owned and operated by such universities and colleges as student union buildings, and student dormitories.

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

Seventh. All parsonages owned by a church society and actually and regularly occupied and used exclusively as a residence by a minister or other clergyman of such church society who is actually and regularly engaged in conducting the services and religious ministrations of such society, and the land upon which such parsonage is located to the extent necessary for the accommodation of such parsonage.

Eighth. All real property, all buildings located on such property and all personal property contained therein, actually and regularly used exclusively by any individually chartered organization of honorably discharged military veterans of the United States armed forces or auxiliary of any such organization, which is exempt from federal income taxation pursuant to section 501(c)(19) of the internal revenue code of 1954, for clubhouse, place of meeting or memorial hall purposes, and real property to the extent of not more than two acres, and all buildings located on such property, actually and regularly used exclusively by any such veterans' organization or its auxiliary as a memorial park.

Ninth. All real property and tangible personal property actually and regularly used by a community service organization for the purpose of providing humanitarian services, which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign not-for-profit corporation if: (a) The directors of such corporation serve without

TESTIMONY TO THE
SENATE ASSESSMENT & TAXATION COMMITTEE
BY RONALD R. HEIN
March 16, 1988

Mr. Chairman and members of the Committee:

My name is Ron Hein, and Rebecca Rice and I are legislative counsel for Complete Property Management and Heritage Management Corporation, on behalf of several cooperative townhouse projects for restricted income families. There are 13 cooperative projects in the State of Kansas, which were initially established pursuant to Housing and Urban Development law, having been set up as not-for-profit corporations to house those with restricted incomes. There is no direct cash subsidy going to these projects, although at the time that the projects were commenced, they were permitted to obtain a discount on mortgage interest rates.

Pursuant to federal law, these projects are not able to be sold, or at least are not able to be sold for the purpose of making a profit during the 20 year period of time during which the projects are restricted for low income purposes. Many of these projects were commenced in the early 1970s. To the best of my knowledge, none of the projects have been sold in an arms-length transaction, although one project was foreclosed upon due to the inability to meet its financial obligations.

In evaluating property for property tax purposes, there are three general rules: cost, market value, and income capitalization. The Board of Tax Appeals has ruled on two separate occasions that since these projects are restricted from being sold, and since there have been no sales, that no market data exists to evaluate these property for tax purposes. The Board of Tax Appeals has also ruled on two separate occasions that income capitalization is not an appropriate technique for valuing these properties since they are prohibited from deriving any income for the owners. Although we disagree with the conclusion with regard to income capitalization, nonetheless, this is the way the Board of Tax Appeals has ruled. Thus, the Board of Tax Appeals has been left with the cost approach as the only means to value these properties. Although the cost of these properties would be comparable to the cost of any other property which is not so restricted by federal law, nonetheless, a willing buyer would not pay as much for a piece of property that he would have to wait 20 years to derive an income from as he would from a piece of property that he could begin deriving income from immediately. Therefore, some counties throughout the State have given a tax reduction to these projects in an effort to truly value their market value, despite the fact that they cannot be sold.

However, in some instances, there has been no reduction in market value despite these restrictions on the saleability of the projects, and they are being assessed the full value based upon the original cost of the project, which is obviously misleading of its true market value.

The Board of Tax Appeals several years ago made an effort to provide for a uniform method of valuing these properties throughout the State, but due to the disparities of mill levies, etc., and appraisal among the varying counties, they were unable to do so. In addition, the Board of Tax Appeals has ruled, as a matter of law, that the assessed valuations utilized in other counties cannot be utilized for purposes of demonstrating the value of these projects.

Under the property tax law, there is already an exemption for HUD projects, so long as they set up by a not-for-profit corporation, and are financed pursuant to the National Housing Act, and are restricted in income, but current provisions limit those exemptions only to exclusively elderly housing projects. The municipal housing projects are also exempt from property taxation by statute. However, these projects fall within the cracks, and are not currently exempt from taxation, because they are not limited to elderly only. There are, of course, elderly low income people living in these housing projects, but they are not limited to the elderly.

Therefore, we are requesting that an amendment be made to HB 2651 to provide for an exemption for these 13 housing projects only for the period of time that they are restricted in the saleability of the projects and are restricted to low income residents. A copy of our proposed amendment is attached to this testimony. I have also attached a copy of the existing statutes which contain the existing exemptions for municipal housing projects and the elderly projects under the National Housing Act.

We have drafted this language with the assistance of the Kansas City office of HUD to insure that no other projects will come within the provisions of this amendment, other than the 13 projects described, which are found in Johnson County, Shawnee County, Riley County, Douglas County, Montgomery County, Sedgwick County, and Wyandotte County.

On behalf of the residents of those housing projects, I would appreciate your adopting the proposed amendment and attaching it to HB 2651.

Thank you very much for your consideration, and I will yield to any questions.

PROPOSED AMENDMENT TO
HB 2651

That HB 2651 be amended on page 4, line 145, by inserting after Sec. 2. the following:

"K.S.A. 1987 Supp. 79-201b is hereby amended to read as follows: 79-201b. The following described property, to the extent herein specified, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

First. All real property, and tangible personal property, actually and regularly used exclusively for hospital purposes by a hospital as the same is defined by K.S.A. 65-425, and amendments thereto, or a psychiatric hospital as the same is defined by K.S.A. 59-2902, and amendments thereto, as in effect on January 1, 1976, which hospital or psychiatric hospital is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not-for-profit corporation; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such a corporation and used exclusively for hospital or psychiatric hospital purposes.

Second. All real property, and tangible personal property, actually and regularly used exclusively for adult care home purposes by an adult care home as the same is defined by K.S.A. 39-923, and amendments thereto, which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not-for-profit corporation, charges to residents for services of which

produce an amount which in the aggregate is less than the actual cost of the operation of the home or the services of which are provided to residents at the lowest feasible cost, taking into consideration such items as reasonable depreciation and interest on indebtedness, and contributions to which are deductible under the Kansas income tax act; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such corporation and used exclusively for adult care home purposes.

Third. All real property, and tangible personal property, actually and regularly used exclusively for private children's home purposes by a private children's home as the same is defined by K.S.A. 75-3329, and amendments thereto, which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not-for-profit corporation, charges to residents for services of which produce an amount which in the aggregate is less than the actual cost of the operation of the home or the services of which are provided to residents at the lowest feasible cost, taking into consideration such items as reasonable depreciation and interest on indebtedness, and contributions to which are deductible under the Kansas income tax act; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such corporation and used exclusively for children's home purposes.

Fourth. All real property, and tangible personal property, actually and regularly used exclusively for housing for elderly and handicapped persons having a limited or lower income, or used exclusively for cooperative housing for persons having a limited or lower income, assistance for the financing of which was received under 12 U.S.C.A. 1701 et seq., or under 42 U.S.C.A. 1437, et seq., which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state

and duly admitted to engage in business in this state as a foreign, not-for-profit corporation, and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such corporation and used exclusively for the purposes of such housing. For the purposes of this subsection, cooperative housing shall mean those non-profit cooperative housing projects operating pursuant to Sections 236 and/or 221(d)(3) of the National Housing Act and acts amendatory thereof and supplemental thereto, and which have been approved as a cooperative housing project pursuant to applicable Federal Housing Administration and U.S. Department of Housing and Urban Development statutes, rules and regulations, during such time as the use of such properties are restricted pursuant to such act, statutes, rules and regulations.

Fifth. All real property and tangible personal property, actually and regularly used exclusively for housing for elderly persons, which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not-for-profit corporation, in which charges to residents for services of which produce an amount which in the aggregate is less than the actual cost of the operation of the housing facility or the services of which are provided to residents at the lowest feasible cost, taking into consideration such items as reasonable depreciation and interest on indebtedness, and contributions to which are deductible under the Kansas income tax act; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such corporation and used exclusively for such housing.

Sixth. All real property and tangible personal property, actually and regularly used exclusively for the purpose of group housing of mentally ill or retarded and other handicapped persons which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly

admitted to engage in business in this state as a foreign, not-for-profit corporation, in which charges to residents for services of which produce an amount which in the aggregate is less than the actual cost of the operation of the housing facility or the services of which are provided to residents at the lowest feasible cost, taking into consideration such items as reasonable depreciation and interest on indebtedness, and contributions to which are deductible under the Kansas income tax act; and which is licensed as a facility for the housing of mentally ill or retarded and other handicapped persons under the provisions of K.S.A. 75-3307b, and amendments thereto, or as a rooming or boarding house used as a facility for the housing of mentally retarded and other handicapped persons which is licensed as a lodging establishment under the provisions of K.S.A. 36-501 et seq., and amendments thereto.

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

42. MINERAL SEVERANCE TAX.
47. BINGO.
48. STATE GAMING REVENUES.
50. AGGREGATE TAX LEVY LIMITATIONS.
51. MOTOR VEHICLES.
52. MARIJUANA AND CONTROLLED SUBSTANCES.

Article 1.—PROPERTY SUBJECT TO TAXATION

79-101.

Attorney General's Opinions:

Tangible personal property of bank is not exempt from taxation. 87-32.

CASE ANNOTATIONS

20. Cited; computer software operational programs held taxable as tangible personal property; application programs held intangible property not subject thereto. *In re Tax Protest of Strayer*, 239 K. 136, 141, 143, 716 P.2d 588 (1986).

79-102.

CASE ANNOTATIONS

26. Leasehold interests not separately assessed and taxed; constitutionality of industrial revenue bond tax exemptions (79-201a *Second*) and payments in lieu of taxes (12-1742) upheld. *State ex rel. Tomasic v. City of Kansas City*, 237 K. 572, 590, 591, 701 P.2d 1314 (1985).

27. Cited; computer software operational programs held taxable as tangible personal property; application programs held intangible property not subject thereto. *In re Tax Protest of Strayer*, 239 K. 136, 142, 143, 716 P.2d 588 (1986).

Article 2.—PROPERTY EXEMPT FROM TAXATION

79-201. Property exempt from taxation; religious, educational, literary, scientific, benevolent, alumni association, veterans' organization or charitable purposes; parsonages. The following described property, to the extent herein specified, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

First. All buildings used exclusively as places of public worship and all buildings used exclusively by school districts organized under the laws of this state, with the furniture and books therein contained and used exclusively for the accommodation of religious meetings or school district purposes, whichever is applicable, together with the grounds owned thereby if not leased or otherwise used for the realization of profit, except that: (a) Any school building, or portion thereof, together with the grounds upon which the building is located,

shall be considered to be used exclusively by the school district for the purposes of this section when leased by the school district to any other political or taxing subdivision of the state or to any association, organization or nonprofit corporation entitled to tax exemption with respect to such property; and (b) any building, or portion thereof, used as a place of worship, together with the grounds upon which the building is located, shall be considered to be used exclusively for the religious purposes of this section when used as a not-for-profit day care center for children which is licensed pursuant to K.S.A. 65-501 *et seq.*, and amendments thereto.

Second. All real property, and all tangible personal property, actually and regularly used exclusively for literary, educational, scientific, religious, benevolent or charitable purposes, including property used exclusively for such purposes by more than one agency or organization for one or more of such exempt purposes. This exemption shall not apply to such property, not actually used or occupied for the purposes set forth herein, nor to such property held or used as an investment even though the income or rentals received therefrom is used wholly for such literary, educational, scientific, religious, benevolent or charitable purposes. This exemption shall not be deemed inapplicable to property which would otherwise be exempt pursuant to this paragraph because an agency or organization: (a) is reimbursed for the provision of services accomplishing the purposes enumerated in this paragraph based upon the ability to pay by the recipient of such services; or (b) is reimbursed for the actual expense of using such property for purposes enumerated in this paragraph; or (c) uses such property for a nonexempt purpose which is minimal in scope and insubstantial in nature if such use is incidental to the exempt purposes of this paragraph; or (d) charges a reasonable fee for admission to cultural or educational activities or permits the use of its property for

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such activities by a related agency or organization, if any such activity is in furtherance of the purposes of this paragraph.

Third. All moneys and credits belonging exclusively to universities, colleges, academies or other public schools of any kind, or to religious, literary, scientific or benevolent and charitable institutions or associations, appropriated solely to sustain such institutions or associations, not exceeding in amount or in income arising therefrom the limit prescribed by the charter of such institution or association.

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

Fifth. All buildings of private nonprofit universities or colleges which are owned and operated by such universities and colleges as student union buildings and student dormitories.

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

Seventh. All parsonages owned by a church society and actually and regularly occupied and used exclusively as a residence by a minister or other clergyman of such church society who is actually and regularly engaged in conducting the services and religious ministrations of such society, and the land upon which such parsonage is located to the extent necessary for the accommodation of such parsonage.

Eighth. All real property, all buildings located on such property and all personal property contained therein, actually and regularly used exclusively by any individually chartered organization of honorably discharged military veterans of the United States armed forces or auxiliary of any such organization, which is exempt from federal income taxation pursuant to section 501(c)(19) of the internal revenue code of 1954, for clubhouse, place of meeting or

memorial hall purposes, and real property to the extent of not more than two acres, and all buildings located on such property, actually and regularly used exclusively by any such veterans' organization or its auxiliary as a memorial park.

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

History: L. 1907, ch. 408, § 2; R.S. 1923, 79-201; L. 1929, ch. 283, § 1; L. 1963, ch. 456, § 1; L. 1965, ch. 509, § 1; L. 1967, ch. 486, § 1; L. 1969, ch. 429, § 1; L. 1974, ch. 427, § 1; L. 1975, ch. 495, § 1; L. 1980, ch. 306, § 1; L. 1984, ch. 349, § 1; L. 1985, ch. 311, § 1; L. 1986, ch. 368, § 1; L. 1986, ch. 369, § 1; July 1.

Attorney General's Opinions:

Church parsonages; application for exemption. 86-119.

CASE ANNOTATIONS

70. National headquarters of NCAA held to be used exclusively for educational purposes. *National Collegiate Realty Corp. v. Board of Johnson County Comm'rs*, 236 K. 394, 404, 690 P.2d 1366 (1984).

71. Cited; computer software operational programs held taxable as tangible personal property; application programs held intangible property not subject thereto. *In re Tax Protest of Strayer*, 239 K. 136, 141, 143, 716 P.2d 588 (1986).

79-201a. Property exempt from taxation; property of federal or state government or agencies or political or taxing subdivisions; fire companies; county fair associations; student unions and dormitories; Kansas City, Missouri, waterworks system. The following described property, to the extent herein specified, shall be exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

First. All property belonging exclusively to the United States, except property which congress has expressly declared to be subject to state and local taxation.

Second. All property used exclusively by the state or any municipality or political subdivision of the state. All property owned or operated by the state or any municipality or political subdivision of the state which is used or is to be used for any governmental or proprietary function and for which bonds may be issued or taxes levied to finance the same, shall be considered to be "used exclusively" by the state, municipality or political subdivision for the purposes of this act. Any property constructed or purchased with the proceeds of industrial revenue

bonds issued prior to July 1, 1963, as authorized by K.S.A. 12-1740 to 12-1749, or purchased with proceeds of improvement district bonds issued prior to July 1, 1963, as authorized by K.S.A. 19-2776, or with proceeds of bonds issued prior to July 1, 1963, as authorized by K.S.A. 19-3815a and 19-3815b, or any property improved, purchased, constructed, reconstructed or repaired with the proceeds of revenue bonds issued prior to July 1, 1963, as authorized by K.S.A. 13-1238 to 13-1245, inclusive, or any property improved, reimproved, reconstructed or repaired with the proceeds of revenue bonds issued after July 1, 1963, under the authority of K.S.A. 13-1238 to 13-1245, inclusive, which had previously been improved, reconstructed or repaired with the proceeds of revenue bonds issued under such act on or before July 1, 1963, shall be exempt from taxation for so long as any of the revenue bonds issued to finance such construction, reconstruction, improvement, repair or purchase shall be outstanding and unpaid. Any property constructed or purchased with the proceeds of any revenue bonds authorized by K.S.A. 13-1238 to 13-1245, inclusive, 19-2776, 19-3815a and 19-3815b, and amendments thereto, issued on or after July 1, 1963, shall be exempt from taxation only for a period of 10 calendar years after the calendar year in which the bonds were issued. Any property, all or any portion of which is constructed or purchased with the proceeds of revenue bonds authorized by K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, issued on or after July 1, 1963 and prior to July 1, 1981, shall be exempt from taxation only for a period of 10 calendar years after the calendar year in which the bonds were issued. Any property constructed or purchased wholly with the proceeds of revenue bonds issued on or after July 1, 1981, under the authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, shall be exempt from taxation only for a period of 10 calendar years after the calendar year in which the bonds were issued. Any property constructed or purchased in part with the proceeds of revenue bonds issued on or after July 1, 1981, under the authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, shall be exempt from taxation to the extent of the value of that

portion of the property financed by the revenue bonds and only for a period of 10 calendar years after the calendar year in which the bonds were issued. The exemption of that portion of the property constructed or purchased with the proceeds of revenue bonds shall terminate upon the failure to pay all taxes levied on that portion of the property which is not exempt and the entire property shall be subject to sale in the manner prescribed by K.S.A. 79-2301 *et seq.*, and amendments thereto. Property purchased, constructed, reconstructed, equipped, maintained or repaired with the proceeds of industrial revenue bonds issued under the authority of K.S.A. 12-1740 *et seq.*, and amendments thereto, which is located in a redevelopment project area established under the authority of K.S.A. 12-1770 *et seq.* shall not be exempt from taxation. Property purchased, acquired, constructed, reconstructed, improved, equipped, furnished, repaired, enlarged or remodeled with all or any part of the proceeds of revenue bonds issued under authority of K.S.A. 12-1740 to 12-1749a, inclusive, and amendments thereto for any poultry confinement facility on agricultural land which is owned, acquired, obtained or leased by a corporation, as such terms are defined by K.S.A. 17-5903 and amendments thereto, shall not be exempt from such taxation. Property purchased, acquired, constructed, reconstructed, improved, equipped, furnished, repaired, enlarged or remodeled with all or any part of the proceeds of revenue bonds issued under the authority of K.S.A. 12-1740 to 12-1749a, inclusive, and amendments thereto, for a rabbit confinement facility on agricultural land which is owned, acquired, obtained or leased by a corporation, as such terms are defined by K.S.A. 17-5903 and amendments thereto, shall not be exempt from such taxation.

Third. All works, machinery and fixtures used exclusively by any rural water district or township water district for conveying or production of potable water in such rural water district or township water district.

Fourth. All fire engines and other implements used for the extinguishment of fires, with the buildings used exclusively for the safekeeping thereof, and for the meeting of fire companies, whether belonging to any

rural fire district, town, city or village organized the

Fifth. All property owned by county and operating under 2-125 *et seq.*

Sixth. Property of a municipality under law (K.S.A. 17-101) and amendments thereto shall not apply unless used by a non-making enterprise.

Seventh. All property acquired or held by the urban redevelopment authority (*et seq.*) and amendments thereto such tax exemption of the municipal corporation disposes of such area to a new area to a not a public body with respect to

Eighth. All property the Kansas amendments thereto for any purposes under the and amendments

Ninth. All property the Kansas amendments thereto for any purposes under the and amendments *et seq.*, and amendments 68-2070 *et seq.*

Tenth. All property park purposes sources authorized K.S.A. 74-4501 thereto.

Eleventh. The property constructed under *et seq.*, and amendments thereto upon which

Twelfth. All property authority of K amendments thereto union building erected upon the mentioned in the amendments thereto, corporation.

Thirteenth. All property defined in subsections and amendments thereto erected, constructed

rural fire district, township fire district, town, city or village, or to any fire company organized therein or therefor.

Fifth. All property, real and personal, owned by county fair associations organized and operating under the provisions of K.S.A. 2-125 *et seq.* and amendments thereto.

Sixth. Property acquired and held by any municipality under the municipal housing law (K.S.A. 17-2337 *et seq.*) and amendments thereto, except that such exemption shall not apply to any portion of the project used by a nondwelling facility for profit making enterprise.

Seventh. All property of a municipality, acquired or held under and for the purposes of the urban renewal law (K.S.A. 17-4742 *et seq.*) and amendments thereto except that such tax exemption shall terminate when the municipality sells, leases or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body entitled to tax exemption with respect to such property.

Eighth. All property acquired and held by the Kansas armory board for armory purposes under the provisions of K.S.A. 48-317, and amendments thereto.

Ninth. All property acquired and used by the Kansas turnpike authority under the authority of K.S.A. 68-2001 *et seq.*, and amendments thereto, K.S.A. 68-2030 *et seq.*, and amendments thereto, K.S.A. 68-2051 *et seq.*, and amendments thereto, and K.S.A. 68-2070 *et seq.*, and amendments thereto.

Tenth. All property acquired and used for park purposes by the state park and resources authority under the authority of K.S.A. 74-4501 *et seq.*, and amendments thereto.

Eleventh. The state office building constructed under authority of K.S.A. 75-3607 *et seq.*, and amendments thereto, and the site upon which such building is located.

Twelfth. All buildings erected under the authority of K.S.A. 76-6a01 *et seq.*, and amendments thereto, and all other student union buildings and student dormitories erected upon the campus of any institution mentioned in K.S.A. 76-6a01, and amendments thereto, by any other nonprofit corporation.

Thirteenth. All buildings, as the same is defined in subsection (c) of K.S.A. 76-6a13, and amendments thereto, which are erected, constructed or acquired under the

authority of K.S.A. 76-6a13 *et seq.*, and amendments thereto, and building sites acquired therefor.

Fourteenth. All that portion of the waterworks plant and system of the city of Kansas City, Missouri, now or hereafter located within the territory of the state of Kansas pursuant to the compact and agreement adopted by chapter 304 of the 1921 Session Laws of the state of Kansas [See K.S.A. 79-205].

Fifteenth. All property, real and personal, owned by a groundwater management district organized and operating pursuant to K.S.A. 82a-1020, and amendments thereto.

Sixteenth. All property, real and personal, owned by the joint water district organized and operating pursuant to K.S.A. 80-1616 *et seq.*, and amendments thereto.

The provisions of this section shall apply to all taxable years commencing after December 31, 1980.

History: L. 1975, ch. 495, § 2; L. 1977, ch. 323, § 1; L. 1978, ch. 390, § 1; L. 1979, ch. 307, § 1; L. 1980, ch. 68, § 5; L. 1981, ch. 370, § 1; L. 1982, ch. 389, § 1; L. 1987, ch. 395, § 1; L. 1987, ch. 368, § 4; July 1.

Law Review and Bar Journal References:

"Survey of Kansas Law: Taxation," Sandra Craig McKenzie and Virginia Ratzlaff, 33 K.L.R. 71, 73 (1984).

Attorney General's Opinions:

(Second) Waters and watercourses; collection, storage and impounding of waters; construction and maintenance of dams; donation of easements; tax exemption. 85-43.

CASE ANNOTATIONS

2. Second paragraph hereof not violative of Kansas or U.S. Constitutions. *State ex rel. Tomasic v. City of Kansas City*, 237 K. 164, 698 P.2d 382 (1985).

3. Criteria for statutory and other tax exemptions reviewed; industrial revenue bond 10-year exemption constitutional. *State ex rel. Tomasic v. City of Kansas City*, 237 K. 572, 596, 701 P.2d 1314 (1985).

79-201b. Property exempt from taxation; hospitals, adult care homes, children's homes, group housing of certain handicapped persons and housing for elderly persons. The following described property, to the extent herein specified, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

First. All real property, and tangible personal property, actually and regularly used exclusively for hospital purposes by a hospital as the same is defined by K.S.A. 65-

425, and amendments thereto, or a psychiatric hospital as the same was defined by K.S.A. 59-2902, and amendments thereto, as in effect on January 1, 1976, which hospital or psychiatric hospital is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not-for-profit corporation; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such a corporation and used exclusively for hospital or psychiatric hospital purposes.

Second. All real property, and tangible personal property, actually and regularly used exclusively for adult care home purposes by an adult care home as the same is defined by K.S.A. 39-923, and amendments thereto, which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not-for-profit corporation, charges to residents for services of which produce an amount which in the aggregate is less than the actual cost of operation of the home or the services of which are provided to residents at the lowest feasible cost, taking into consideration such items as reasonable depreciation and interest on indebtedness, and contributions to which are deductible under the Kansas income tax act; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such corporation and used exclusively for adult care home purposes.

Third. All real property, and tangible personal property, actually and regularly used exclusively for private children's home purposes by a private children's home as the same is defined by K.S.A. 75-3329, and amendments thereto, which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not-for-profit corporation, charges to residents for services of which produce an amount which in the aggregate is less

than the actual cost of operation of the home or the services of which are provided to residents at the lowest feasible cost, taking into consideration such items as reasonable depreciation and interest on indebtedness, and contributions to which are deductible under the Kansas income tax act; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such a corporation and used exclusively for children's home purposes.

Fourth. All real property and tangible personal property, actually and regularly used exclusively for housing for elderly and handicapped persons having a limited or lower income, assistance for the financing of which was received under 12 U.S.C.A. 1701, *et seq.*, or under 42 U.S.C.A. 1437, *et seq.*, which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not-for-profit corporation; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such a corporation and used exclusively for the purposes of such housing.

Fifth. All real property and tangible personal property, actually and regularly used exclusively for housing for elderly persons, which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not-for-profit corporation, in which charges to residents produce an amount which in the aggregate is less than the actual cost of operation of the housing facility or the services of which are provided to residents at the lowest feasible cost, taking into consideration such items as reasonable depreciation and interest on indebtedness and contributions to which are deductible under the Kansas income tax act; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such corporation and used exclusively for the purpose of such housing.

Sixth. All real property and tangible personal property actually and regularly used

exclusively for housing of mentally handicapped persons by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not-for-profit corporation; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such a corporation and used exclusively for the purposes of such housing.

The provision to all taxable years ending on or before December 31, 1981.

History: L. 1979, ch. 421, § 1; L. 1980, ch. 311, § 2; L.

CASI

2. Exemption under both low income elimination and statement of individual income tax determination. Board of Luth. Good Samaritans, 455 (1985).

79-201d. Part of the act relating to the taxation of animals on farms and farm storage facilities. The following provisions of the act are hereby exempt from the provisions of the act relating to the levying of ad valorem taxes levied in the state of Kansas:

First. Horses and cattle less than six months old; and asses less than six months old; and other animals less than six months old.

Second. All horses and cattle less than six months old; and asses less than six months old; and other animals less than six months old.

exclusively for the purpose of group housing of mentally ill or retarded and other handicapped persons which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not-for-profit corporation, in which charges to residents produce an amount which in the aggregate is less than the actual cost of operation of the housing facility or the services of which are provided to residents at the lowest feasible cost, taking into consideration such items as reasonable depreciation and interest on indebtedness and contributions to which are deductible under the Kansas income tax act, and which is licensed as a facility for the housing of mentally ill or retarded and other handicapped persons under the provisions of K.S.A. 75-3307b, and amendments thereto, or as a rooming or boarding house used as a facility for the housing of mentally retarded and other handicapped persons which is licensed as a lodging establishment under the provisions of K.S.A. 36-501 *et seq.*, and amendments thereto.

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

History: L. 1975, ch. 495, § 3; L. 1976, ch. 421, § 1; L. 1977, ch. 324, § 1; L. 1985, ch. 311, § 2; L. 1986, ch. 369, § 2; July 1.

CASE ANNOTATIONS

2. Exemption under *Fourth* applicable to rentals to both low income elderly and handicapped; financial statement of individual tenants not pertinent to determination. Board of Johnson County Comm'rs v. Ev. Luth. Good Samaritan Soc., 236 K. 617, 622, 694 P.2d 455 (1985).

79-201d. Property exempt from taxation; animals or livestock, hay and silage, and farm storage and drying equipment. The following described property, to the extent herein specified, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

First. Horses less than 12 months old; cattle less than 12 months old; mules and asses less than 12 months old; sheep less than six months old; hogs less than six months old; and goats less than six months old.

Second. All hay and silage. The term

"hay" shall include alfalfa, brome, clover, and prairie hays and all other grasses and plants which are harvested for forage. The term "silage" shall include corn, milo, sorghum and all other plants, cut, compressed and preserved by its own fermentation for fodder.

Third. All farm storage and drying equipment meeting eligibility requirements, as provided in Title 7, Chapter XIV, Subchapter B, Part 1474 of the Code of Federal Regulations and as in effect on December 31, 1977, for loans under the federal farm storage and drying equipment loan program, whether financed or not, and all used farm storage and drying equipment meeting such eligibility requirements but for the fact that the same was not purchased from the commodity credit corporation, which equipment is used exclusively for the storage or drying of haylage, silage, corn, oats, barley, grain sorghum, wheat, rye, soybeans, flaxseed, rice, dry edible beans or sunflower seed, for any eight of the 10 calendar years next following the calendar year in which such equipment is acquired or construction thereof is completed. The provisions of this subsection shall apply to equipment acquired or the construction of which was completed during the calendar year 1977, or any year thereafter.

The provisions of this section shall apply to all taxable years commencing after December 31, 1984.

History: L. 1975, ch. 495, § 5; L. 1978, ch. 391, § 1; L. 1978, ch. 392, § 3; L. 1982, ch. 390, § 1; L. 1985, ch. 311, § 3; July 1.

79-201f. Property exempt from taxation; personal property moving in interstate commerce or stored in warehouses or storage areas prior to shipment out of state. The following described property, to the extent herein specified, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

(a) Personal property which is moving in interstate commerce through or over the territory of the state of Kansas;

(b) personal property which has been shipped into the state of Kansas from outside the state which is stored in a warehouse or storage area operated by a warehouseman if such warehouseman keeps records of such property showing point of

TESTIMONY OF ROBERT J. O'CONNOR

TO THE

SENATE ASSESSMENT & TAXATION COMMITTEE

CONCERNING HOUSE BILL 2651

MARCH 16, 1988

A & T 3/16/88

Att. 4

House Bill 2651 has two significant features. Both of these are essential if traditionally exempt humanitarian service organizations are to retain their exemptions in light of recent Board of Tax Appeal (BOTA) opinions.

I.

The first feature of House Bill 2651 is that it defines the "humanitarian services" exemption category. This is necessary because of the narrow interpretation of Lutheran Home which the BOTA has recently been using. If "charitable and benevolent" organizations are only those which give alms to the poor, no exemption category exists for organizations which render humanitarian services to other segments of society. No exemption category remains, therefore, which is applicable to other portions of traditionally exempt humanitarian programs and organizations.

This section of House Bill No. 2651 does not overrule Lutheran Home. It accepts and supplements it to provide a current legal basis for traditional humanitarian exemptions. It "plugs the gap" which Lutheran Home created in the exemption laws for humanitarian organizations.

II.

The second feature of House Bill 2651 is that it eliminates the new definition and application of "investment income" which the BOTA has recently created, and which it has used to deny traditional exemptions to most of those organizations which have lost their exemption in recent years.

- A. The BOTA has found "investment income" when an organization receives membership fees or program user fees in excess of cost of service, 1) even though those members' usages or the programs involved were the very types of activities which entitled the organization to exemption (i.e., were "educational", "scientific", etc.), and 2) even though those activities were conducted on the very property for which exemption was sought.

The BOTA's definition clearly is contrary to the basic concept of exempt use. If one uses property and all of the revenues therefrom solely to conduct exempt activities on that property, the legislature obviously intended that property to be exempt. But the BOTA repeatedly has held to the contrary in recent years.

- B. Further, the BOTA has applied its new definition of "investment income" on a program-by-program basis, even though the organization operates an integrated program of numerous activities. Where the BOTA finds that any single program conducted on a property yields "investment income", then the entire property loses its exemption.

Notwithstanding that the National Collegiate Realty Corp. decision of the Kansas Supreme Court expressly repudiates the BOTA's approach, the BOTA in recent years has consistently used it. The Kansas Supreme Court requires the use of the "whole integrated program" test; the BOTA uses instead its own program-by-program test.

House Bill No. 2651 addresses these problems by eliminating the "investment income" restriction on "humanitarian service organizations". Nonetheless, this will not allow such organizations to amass non-taxable properties. The requirement of humanitarian uses and the other seven requirements of the bill will continue to prohibit this.

III.

Is the humanitarian services community unduly alarmed because of isolated BOTA cases?

In several orders in the last few years --- including cases involving the Salvation Army, community centers, family and children's services organizations, hospitals and the Topeka YMCA --- the BOTA has consistently followed the approaches which I have discussed.

If one reads those orders as reflecting a rational and coherent approach --- albeit a new and different one --- to the exemption of humanitarian service organizations, then one can only conclude that the concerns of these organizations are reasonable.

Note that the Topeka YMCA received four (4) BOTA exemptions after the 1970 amendments to K.S.A. 79-201, three (3) of them after Lutheran Home. The Y's programs, property uses and financial practices did not change from the times when those exemptions were granted until the time in 1986 when they were denied. Only the BOTA's approach to exemption changed.

The question was asked yesterday whether House Bill No. 2651 is "merely gasoline poured on a small fire". The better picture is of the humanitarian services community standing in the path of an oncoming wildfire. No, we are not all burned up yet. We are trying to save ourselves before it is too late. We can clearly see danger coming. When would you call for help?

Thank you.

##

**STATEMENT IN SUPPORT
OF H.R. 2651**

SUBMITTED BY: EUGENE T. HACKLER and
ROBERT C. LONDERHOLM, Attorneys
Olathe, Kansas

**I. General Meaning of "Charity" and
"Charitable Tax Exemption"**

There are two generally accepted meanings or views of "charity" and the scope of "charitable tax exemption":

1. The Majority "Humanitarian" View - sometimes referred to as the "legal meaning of charity".

2. The Minority "Almsgiving" View - sometimes referred to as the "street meaning of charity".

(See quotation attached from 71 American Jurisprudence 2d, State and Local Taxation, §373, and Green v. Connally 330 F Supp. 1150, aff'd, Coit v. Green, 404 U.S. 997 (1971): "...Clearly, the term 'charitable' is 'used in its generally accepted legal sense'... and not in the street or popular sense' (such as, e.g., benevolence to the poor and suffering..." id. at 1157; emphasis supplied.

The majority humanitarian view in the United States that charity is not confined solely to "almsgiving" to the poor or "give away free" services was followed by the Supreme Court in Kansas prior to 1973 and for as far back in our state's judicial history as the issue has been traced. See Nuns of St. Dominic v. Younkin, 118 Kan. 554 (1925).

The use of the terms, "humane", "humanity", "humanitarian activities" and promotion of a "public benefit" or "public welfare" appears in various places in pre-1973 Supreme Court Kansas cases and other decisions as describing the scope of the charitable exemption under the majority view or definition of charity. See for example, in Topeka Presbyterian Manor, 195 Kan. 90 (1965); Nuns of St. Dominic, 118 Kan. 554 (1925); Masonic Home v. Sedgwick County, 81 Kan. 859 (1910); City of McAllen v. Ev. Lutheran Good Samaritan Society, 530 S.W. 2d 806 (Tex. Sup. 1976):

"The courts have defined charity as being something more than mere almsgiving or the relief of poverty and distress...The ultimate consideration should be based upon an evaluation of the total operation of the institution engaged in humanitarian activities...." 530 S.W. 2d, at p. 810; underlining added.

Therefore, the concept of exemption for "humanitarian activities" is nothing "new" in Kansas. It is merely a legally well recognized, shorthand phrase to express the majority "legal" or "humanitarian activity" view of charity (as distinguished from the minority "almsgiving" view), which majority view had been followed virtually throughout the history of the State.

By using this legally established phrase, "humanitarian activities", the Legislature would simply be expressing clearly the desire or intent to restore charitable tax exemption in Kansas -- at least legislative tax exemption -- to its pre-1973 status.

Prior to 1973, there are no known or recorded cases of "nonprofit massage parlors, country clubs, or yacht clubs", being granted property tax exemption in Kansas.

Why, should there be a concern now that all these bizarre activities would somehow rush in and qualify for exemption under this amendment, when history teaches us that they were not granted exemption under the pre-1973 law, which also followed the majority "humanitarian" view of charity? Nor are we aware of such bizarre activities ever being granted tax exemption in the many other states with which we are familiar and which follow the majority humanitarian view. Common sense would indicate that such activities did not qualify before, and will not qualify under the amendment.

If for some unforeseen reason, the Board of Tax Appeals, or the Courts or judicial review, felt themselves constrained to now start granting exemption to such bizarre activities, this could be quickly brought to the Legislature's attention and remedied. There is no reason to believe, or anticipate, that such would occur, based on years of past experience in Kansas and other States.

II. Determination of Eligibility For Tax Exemption Is A Question of Law, Not of Fact Or Judgment

The determination of eligibility for tax exemption is a question of law (State v. Davis, 113 Kan. 4). It is not a question of fact, nor should the facts ordinarily be in dispute. The burden

of proving the facts rests on the applicant, Lutheran Home, Inc. v. Board of County Commissioners, 211 Kan. 270 (1973).

The Board of Tax Appeals sits as a judicial or quasi-judicial body in ruling on tax exemption matters, similar to a District Court; it is not a question of "judgment" or "opinion" such as determining the "value" of property by the Board would be. See In re Lakeview Gardens, Inc., 227 Kan. 161 (1980). Consequently, any decision by the Board is completely reviewable by the District Court as to the question of law. This provides a clear safeguard in applying the recognized majority humanitarian view of charity, as the Court would apply established precedents in the law of charity, both from Kansas and other states, in determining eligibility under the humanitarian view. In addition, the County is free to question each year the tax exempt status of every exempt institution in the County, should any change in the use of the property occur, or material deviation from the original basis upon which the exemption was granted. This provides an additional safeguard against any abuse.

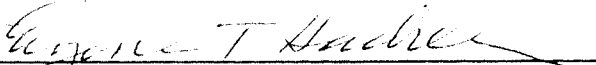
III. Precedents Set By the Board of Tax Appeals Must Be Applied Statewide

The rulings by the Board of Tax Appeals must be applied statewide, since the exemption statute is of statewide application, to avoid a violation of the "uniform and equal" and the "equal protection" provisions of the State and Federal Constitutions. Article 11, §1, Kans. Constit.; Fourteenth Amendment, United States Constitution. Whyy v. Borough of Glassboro, 393 U.S. 117. Consequently, a ruling by BOTTA concerning a particular organization in a specific County must be observed as precedent by all counties.

IV. The Phrase "Physical, Mental, Social and Spiritual Welfare"

The phrase "physical, mental, social and spiritual welfare" has its roots in many definitions of charity, to-wit: "Improvement of spiritual, mental, social and physical conditions" (from Presbyterian Manor, supra, at p. 44). A new Nebraska statutory exemption defines a "charitable organization" as one which is operated "for the purpose of the mental, social or physical benefit of the public or an indefinite number of persons," Neb. Rev. Stat. §77-202(1)(c). 15 Am. Jur. 2d Charities §3, quotes the definition of charity as a "benefit" to persons from an educational, religious, moral, physical or social standpoint."

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