

Approved March 23, 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. on March 22, 1988 in room 519-S of the Capitol.

All members were present except:

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:

Senator Ben Vidricksen
Mark Beshears, Kansas Hospital Assoc.
Linda Terrill, St. Francis Hospital
Charlie Gillam, Small Business Owner

Chairman Kerr called the meeting to order and said the first item on the agenda would be a hearing on H.B. 2002.

HOUSE BILL 2002

Senator Ben Vidricksen testified in opposition to H.B. 2002. (Att. 1 & 2) He stated that non-profit competition is a serious concern of small businesses. He said he feels that businesses are experiencing a form of domestic unfair competition that threatens their survival. The competition is generated by the commercial activities of nonprofit organizations that engage in the sale of substantially similar goods and services. He said "commercial nonprofits" are often indistinguishable from the small business with they compete. The primary difference is not how they function or the products they produce, but the advantages that they gain from their nonprofit status. Their principle benefits are federal, state and local tax exemptions, but they also enjoy advantages in postal rates, and regulatory and reporting requirements. Sen. Vidricksen stated that many states have introduced proposals aimed at reducing harm caused to small business by unfair competition. He said he felt that our best chance of growth is to expand our small businesses in Kansas.

Mark Beshears testified. (Att. 3) He said that H.B. 2002 would not allow hospitals to deviate from hospital purposes. The bill would also not tie the hospital's tax exemption to its federal tax exempt status. Regardless of it's tax exempt status, specific tests defined in H.B. 2002 would still have to be met. He said that Kansas is in the minority when it comes to hospital property tax exemptions. He also said that the bill is designed to prevent a hospital from losing its entire property tax exemption, if only a very small part of its facility is being used for a non-exempt purpose. He stated that the Kansas Hospital Assoc. requests a reference to K.S.A. 65-425(a) on line 31.

In response to questions, Mr. Beshears stated that there is no partial exemption for buildings that house "for profit" as well as "not for profit" entities.

Linda Terrill testified. (Att. 4, 5, 6 & 7) She stated that this legislation is "not" the charitable organizations legislation. She stated that she disagreed with the Board of Tax Appeal's interpretation of "exclusive use." She said that non-profit hospitals perform the same services as for-profit hospitals, except charitable care. She felt that persons testifying by saying they do not think it fair that non-profit hospitals compete with them tax-free do not discuss how much free charitable services they provide. She said that she suggested letting the health care administrators

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 22, 19 88

have freedom to run their hospitals. As the face of health care changes daily, so does the manner of the delivery of such care. She also asked for consideration to strike the language on page 47. The word "necessary" is not needed.

Charlie Gillam testified in opposition to H.B. 2002. (Att. 8) He stated that he has heard a lot about taking the pressure off of the hospitals so that they do not have to worry about their tax exempt status. He felt that taking the pressure off of the hospitals would give them an open door to operating other businesses from the hospitals. Mr. Gillam stated that it is very hard to compete with the "medical" surroundings of a hospital, and even though they charge a substantial fee for a hearing test that he administers free, many people will go to the hospital. He felt that many not for profit hospitals advertize unfairly, because they definitely make a profit on their products such as hearing aids. He stated that he opposed the bill and felt passage of it would be unfair to small businesses.

HOUSE BILL 2744

Senator Burke moved to amend H.B. 2744 by making it effective upon publication in the State Register. Senator Mulich seconded. Senator Burke moved to recommend H.B. 2744 favorably for passage as amended. Senator Mulich seconded. Motion carried.

HOUSE BILL 2724

Not enough time was remaining for any action to be taken on H.B. 2724.

Sen. Burke moved to adopt the minutes of March 18 and March 21 meetings. Sen. Thiessen seconded. Motion carried.

Meeting adjourned.

ASSESSMENT AND TAXATION

OBSERVERS
(PLEASE PRINT)

DATE	NAME	ADDRESS	REPRESENTING
3/22/88 "	Kim Mahan	Topeka	PVID
	Bill Waters	"	"
	Mary Ellen Combe	Wichita	St Francis Reg Med.
	Sam Henderson	"	" "
	Jeff W. Toal	Topeka	" "
	JOHN H HOLMGREN	Topeka	Catholic Health Assn
3/22/88	Linda Terrill	Overland Park	St. Francis Reg. Med. Ctr
	PAT BARNES	Topeka	Ks. Mohrler Dist. Bd.
	Rich McKee	Topeka	K.S. Livestock Assoc.
	DUD CORN	"	KCCI
	RON CALBERT	NEWTON	U.T.U.
	KAREN MCCAIN	TOPEKA	KTR
	TON CACHES	WICHITA	BOEING
	Tom Bell	Topeka	KHA
	Charlie Gillum	Emporia	
	Jim McBrand	Topeka	observer

TO: SENATE ASSESMENT AND TAXATION COMMITTEE
FROM: SENATOR BEN VIDRICKSEN
RE: A POSITIVE THREAT TO SMALL BUSINESS DEVELOPMENT
"Unfair Nonprofit Competition with Small Business"

I appear before you today not only in my capacity as a member of the legislature but also in conjunction with my activities with the S.B.D.C. and the S.B.A.

I'm sure you are all aware that the #3 concern of Small Business in the U.S. is non-profit competition. This was evidenced by the White House Conference prioritizing it in the #3 position of concerns. The increased volume of competition has spawned an outpouring of complaints from the small business community, and recognition by policymakers of the size of the problem. From Congress to the states, the complaints from the small business sector have caused a fundamental and timely re-examination of the protections in place to prevent such unfair competition.

Increasingly, small businesses are experiencing a form of domestic unfair competition that threatens their prosperity and survival. The competition is generated by the commercial activities of nonprofit organizations that engage in the sale of substantially similar goods and services.

"Commercial nonprofits" are often indistinguishable from the small business with which they compete. The primary difference is not in how they function or in the products they produce, but in the advantages that flow from their nonprofit status. Although the principal benefit is their exemption from federal, state and local taxes, they also enjoy advantages in postal rates, numerous regulatory and reporting requirements, all of which

provide them with a substantial edge over their for-profit competitors.

In recent years, nonprofit organizations, particularly in the educational and health care industries, have expanded their commercial activities dramatically increasing the level of competition with small businesses. Heightened competition for donations, has led nonprofits to look to profit-making activities as a source of dependable operating revenue. As a result, traditional "donative" nonprofits, which rely primarily on gifts and contributions for their operating revenues, are increasingly being replaced by "commercial" nonprofits, which derive a significant portion of their income from sales of goods or services.

The increased emphasis on commercially generated income has been coupled with an explosive growth in the number of nonprofit organizations. According to the Internal Revenue Service, there were 870,000 active nonprofit entities in 1985, whereas annual information returns were filed by only 99,467 tax-exempt organizations. The number of non-profit organizations almost doubled in the decade between 1968 and 1978 alone, and has reached well over 900,000 today. In 1929, the nonprofit sector accounted for less than 1.2 percent of the gross national product, but by 1985 had grown to 3.3 percent. The share of total direct United States employment accounted for by nonprofits is even larger than its contribution to GNP, amounting to 5.9 percent in 1973 and much more today. According to recent IRS statistics, the total assets held by charitable organizations in 1983 rose by 18 percent from 1982, from \$279.6 billion to \$331.2 billion.

The increased volume of competition has spawned an outpouring of complaints from the small business community, and recognition by policymakers of the size of the problem.

Many state legislatures have introduced proposals aimed at reducing harm caused to small business by unfair competition. Eighteen states have introduced legislation authorizing agencies or commissions to study the growth of unfair competition and its impact on small business: California, Colorado, Georgia, Hawaii, Idaho, Illinois, Indiana, Kentucky, Minnesota, Montana, New York, North Dakota, Ohio, Pennsylvania, Texas, Utah, Virginia and Wisconsin. The state of Arizona has enacted legislation establishing a Private Enterprise Review Commission, charged with monitoring instances of unfair competition and given authority to resolve complaints.

The state of Louisiana has established a grievance procedure for handling complaints of unreasonable competition directed at colleges and universities. Under the Louisiana procedure, the filing of a complaint by small business must be satisfactorily resolved within 45 days. If not resolved, the complaint is made known to the president or executive director of the institution and the board of regents is empowered to resolve the dispute. Other states that have pending legislation to create review boards and grievance procedures include Illinois, Montana, New York, Ohio and Oklahoma.

The states of Arizona, Arkansas, Illinois, Missouri, Mississippi, New York and West Virginia have introduced measures to increase regulatory and reporting requirements of nonprofits. Legislation introduced in Mississippi, for example, would provide for the supervision of charitable

organizations by the Consumer Protection Division of the Office of the Attorney General, require registration and filing of certain instruments by charitable corporations and trustees, and authorize the Attorney General to investigate the transactions of charitable organizations. A recently defeated measure in Massachusetts would have subject nonprofit corporations receiving public funds to the open meeting and open record laws.

As of July, 1987, two states, Arizona and Illinois, have enacted laws to directly limit unfair competition by nonprofits or state agencies. At least eleven other states have introduced such legislation, California, Wyoming, Idaho, Maine, Massachusetts, Michigan, Minnesota, Oregon, New York, Texas and West Virginia. A host of other state initiatives are designed to equalize the treatment accorded nonprofits and for-profits businesses. For example, a Minnesota bill would impose certain taxes on churches and educational institutions, depending on the commercial use of their property. A New York bill provides for the Secretary of State to establish reasonable standards for the registered charities in terms of fund raising and operational expenses. The University of Washington has developed its own guidelines for curtailing the commercial activities of nonprofit organizations, which may serve as a useful model for other entities. I have this information and their guidelines. Kansas ranked #2 in the nation in 1985 in the number of small business failures. Things are tough for the Small Businessman, let's not make them tougher.

It has been said time and again, the big plants, the General Motors, the Toyotas, the Saterns are hard to come by. Our best chance at growth

is to expand our Small Businesses in Kansas, not only to bring new ones into our state but to assist those who are existing businesses operating in Kansas now.

Why are we, the State of Kansas with all our legislative initiatives to promote small business discussing opening the gates further for non-profit competition that is in the direct contrast to what we are trying to accomplish?

Mr. Chairman, members of the committee, I suggest you report HB 2002 unfavorable. I think you'll be doing the entire state of Kansas an injustice to open the flood gates any further, we should be talking like the majority of states and tighten up the laws governing non-profits. There are 32 of these.

Mr. Chairman, I have passed out some additional information for your perusal and would attempt to answer questions.

The growth in non-profits is not confined to particular industries locations, but has pervaded all sectors of the economy, from health care to computer services. Among the most notorious types of non profit competition is the following:

1. Educational Institutions: As pressures to generate revenues have increased, some universities have developed enterprises to compete with the small business. Examples of unfair competition include: travel services unrelated to off-campus study or other educational purposes; video or audio-visual production work that could be performed by a for-profit business; campus photo labs that process non-scientific photos to help cover costs; sales of discounted personal computers to students through university bookstores; and books (not text); thousands of items not related to educational functions, and, pricing of items without including overhead charges included in expenses of businesses offering the same service.
2. Consulting: Private practice consulting engineers have experienced increased competition by nonprofits in performing feasibility studies such as water quality studies, specialized engineering research, surveying and mapping, and computerized design-aided productions for government agencies and private firms.
3. Analytical Testing: Independent testing laboratories perform a wide array of analytical testing services for both private industry and government agencies. The for-profit sector dominated by small firms has experienced non-profit competition from colleges and universities; so-called "captive" nonprofit research institutes such as federally funded

research and development centers, and federal contract research centers, which are essentially arms of a sponsoring Federal agency; and independent nonprofit organizations, such as Underwriters Laboratories, which devote a substantial portion of their resources to providing commercial services to industrial clients.

4. The Hearing Aid Industry: The Hearing Aid Industry was once composed almost exclusively of proprietary firms involved in manufacturing and retailing hearing aids. Since the mid-1970's there has been a growing incursion by non-profit hospitals and clinics into the retail end of the industry. In Seattle, Washington, several hearing aid stores have closed after a hospital started selling these medical devices. The advertising used by the hospital implied that by doing business with a medical facility you would get a better service and a better deal.

5. Telephone Answering Service: In Topeka, Kansas, a non-profit hospital has entered the physicians answering service and has caused severe economical problems for a local company.

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OF COUNSEL
ROBERT A. McCLURE

March 22, 1988

MEMORANDUM

TO: Senate Assessment and Taxation Committee

FROM: Mark Beshears
Goodell, Stratton, Edmonds & Palmer, Topeka, Kansas
Legislative Counsel to
Kansas Hospital Association

SUBJECT: House Bill No. 2002

1. House Bill No. 2002 applies only to nonprofit hospitals in Kansas.

2. During the 1986 Session, the Legislature amended the statute dealing with literary, educational, scientific, religious, benevolent and other charitable organizations to state that the organization's property tax exemption will not be lost if the property is used for a non-exempt purpose, that is "minimal in scope and insubstantial in nature." House Bill No. 2002 amends the nonprofit hospital statute to add similar language and make it consistent with what the Legislature did in 1986.

3. House Bill No. 2002 would not allow hospitals to deviate from hospital purposes. The Bill clearly indicates that any use of the property must still be "incidental to the exempt purpose" of the hospital. The current statute does not provide for any type of incidental or minimal test. The current statute, as interpreted by the Supreme Court and the Board of Tax Appeals, applies a very strict test. The Kansas Hospital Association feels the statute should be amended to recognize the reality of the hospital industry and to allow a measure of flexibility to the current tax exemption environment.

4. House Bill No. 2002 would not tie the hospital's tax exemption to its Federal tax exempt status. Regardless of the hospital's Federal tax exempt status, specific tests defined in

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House Bill No. 2002 would still have to be met. It would be possible that even if a hospital maintains its Federal tax exempt status, it could lose its Kansas property tax exemption if it violated the terms and tests of the statute.

5. Kansas is in the minority when it comes to hospital property tax exemptions. Most states either apply tests similar to one in House Bill No. 2002, or allow for "split listing," which makes the hospital pay property taxes only on that portion of property which is being used for non-exempt purposes.

6. House Bill No. 2002 would not allow a hospital to offer services to the general public that are unrelated to hospital purposes.

7. House Bill No. 2002 is designed to prevent a hospital from losing its entire property tax exemption, if only a very small part of its facility is being used for a non-exempt purpose.

8. House Bill No. 2002 is necessary because the Kansas Supreme Court and the Kansas Board of Tax Appeals have made it clear that the term "exclusively" is to be applied in a very narrow and strict sense. This strict interpretation requires a lease by one exempt organization to another exempt organization of property used by the exempt organization solely for charitable or hospital purposes to be placed on to the tax rolls. The courts have defined and interpreted the lease as a second use, and thus is considered not to be exclusively used for hospital or charitable purposes.

9. The Kansas Hospital Association respectfully requests this Committee to include at line 31 a reference to K.S.A. 65-425a. This statute defines a hospital to also include any clinic, school of nursing, long-term care facility and child care facility operated in connection with the operation of a medical care facility.

10. House Bill No. 2002, if enacted, would accomplish the following:

- a. To clarify what is meant by "hospital purposes."
- b. To permit insubstantial use of hospital premises in the same way, and using the same language, as was afforded to charitable and human services organizations by the 1986 Legislature.

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c. To permit leases of space by one charitable organization to another charitable organization. The lease of the space would not run afoul of the property tax exemption statutes, and would allow a hospital to provide a charitable organization, space which may be used to further the overall health and well being of the community.

H.B. 2002

TESTIMONY OF ST. FRANCIS REGIONAL MEDICAL
CENTER, INC.

LINDA TERRILL

Thank you Mr. Chairman and members of the Committee for allowing me to testify today on H.B. 2002, the bill related to ad valorem tax exemption of not-for-profit hospitals.

For those of you that I have not had the opportunity to meet, my name is Linda Terrill and I am here today representing St. Francis Regional Medical Center in Wichita, Kansas. I currently practice law in Overland Park with the law firm of Perry & Hamill. Formerly, I served from 1984 to 1986 as General Counsel for the Kansas Board of Tax Appeals, and I had the pleasure of meeting and working with several of you during the 10 years I worked as an administrative aide in this building.

First, I would like to state that this legislation is not the charitable organizations legislation. Non-profit hospitals are exempt pursuant to a whole other statute.

It is substantially different than the charitable exemption law. For your general information, some states, such as Missouri, do exempt non-profit hospitals under general charitable or religious exemption statutes. As you know, Kansas does not. To be exempt, a not-for-profit hospital need not show they are exclusively charitable, instead they must show:

- 1) That they are a hospital; and
- 2) Organized as a not-for-profit corporation.

Now, why am I here, if St. Francis is not facing the problems charitable organizations are facing? First, we are asking for some equity with the literary, educational, scientific, religious, benevolent and charitable organizations by amending 79-201b to include the "minimal in scope and insubstantial in nature language" of 79-201. Secondly, it will allay the fears of hospital administrators and their counsel that current programs being offered will not jeopardize their hospitals exemptions.

It is important to understand that I view this statutory change as a clean-up one which is technical in nature. No additional hospitals will qualify with this change. This change will preserve the status quo. Further, I do not believe that the currently exempt hospitals will significantly modify or expand their current programs. I do believe it will stop the hysteria and stop some of the inane considerations currently being looked at in light of recent Board decisions.

I have a great deal of respect and admiration for the Board but I do have to respectfully disagree with their interpretation recently of exclusive use. I prefer the duck test used by the Board when they use to do farm machinery exemptions. The equipment had to be used exclusively on a farming and ranching operation and it was deemed a farm if it looked like a farm, walked like a farm or quacked like a farm. I have attached copies of the Board opinions on the exemptibility of the National Council of Jewish Women. They were denied exemption because they were

actively engaged in "lobbying efforts," they receive monies from the operation of a thrift store, and they hold social gatherings for their members. I respectfully assert this opinion is wrong. First, they were not asking for an exemption on the thrift store, it's located in Missouri. There is no Kansas law relative to where contributions come from to qualify for exemption.

More importantly there is no law, moreover, no mention of lobbying in relation to Chapter 79 laws for ad valorem tax exemption. If that were the case, if this Order is correct Senators, Jim Yonally is seriously jeopardizing the exemption of the Shawnee Mission Public Schools, Mr. Koepke can forget the KASB exemption, Mr. Gaches should cease lobbying, or Boeing will lose their tax exemptions. Many legislators undoubtedly have farm machinery which is exempt because it is used exclusively on a farming and ranching operation. Well, if a significant portion of your time is spent authoring, lobbying for and against and working hard to influence legislation for the benefit of your constituents, then is your farm a farm or are your legislative activities such that you have a dual use of the farm? A hospital is currently in jeopardy of losing their exemption because of testimony that personal phone calls are made on their telephone paging system. If this test were applied to farmers, no equipment would be off the rolls. In fact, the state office building would be in serious jeopardy.

These examples do sound ludicrous but because of recent opinions, hospitals are concerned. Will they have to have a wife call the children from a pay phone outside the hospital to tell the kids their dad is in the hospital. Further, while staff is obviously discouraged from making personal calls, it cannot realistically be stopped.

Finally, I want to address the other big concern . . . competition with private enterprise. While I am aware that many do not want to hear this, but giving a competitive edge to exempt entities is often the very reason exemptions were enacted. There is no requirement, express or implied, that an organization get an exemption unless they perform a service which is in competition with a taxable entity. If that were true, no IRB exemption would be granted. Non-profit hospitals perform substantially the same services as for-profit hospitals. For-profit hospitals do everything a non-profit hospital does except one thing . . . charitable care. Persons who testify that they do not think it is fair that non-profit hospitals compete with them tax-free do not discuss how much free charitable services they provide. With all due respect, their argument is unfounded. Nowhere in 79-201 et seq. is there any mention that exempt entities are limited to providing services not offered by any for profit competitor. And I would assume that "for-profits" would resent any statutory requirement that they provide their service for free to anyone

who lacks the ability to pay. The tax exemption, plus contributions from generous persons and companies, is what has allowed Saint Francis Regional Medical Center the ability to provide a century of services to Kansas and her citizens.

Finally, I want to address the concern of potential abuse. I think I can safely say that no other exempt entity is more regulated by state and federal authorities. These include H & E, EPA, SRS, IRS, Fraud and Abuse, Anti-trust, and on and on. An audit by the IRS is not a simple review of books and records. St. Francis Regional Medical Center's successful audit took months, not days.

What am I suggesting? I am suggesting that health care administrators be allowed the freedom to run their hospital. If they lose their non-profit status, they will lose their ad valorem exemption. Nit-picking is unnecessary. Let them be treated like farmers. If it looks like a duck, walks like a duck and quacks like a duck, it will be a duck. Kansas has, as you know, an exemption for HUD programs for housing low-income elderly. In a recent case, Johnson County challenged an exemption because four persons residing there did not meet the income guidelines. The Kansas Supreme Court said that county officials need not burrow through records of residents, because HUD had the responsibility to ensure the project met their standards. If they didn't comply, HUD would pull out and then the ad valorem tax exemption would be lost. This is what we are asking for; a self-regulating exemption.

The face of health care changes daily. The manner of the delivery health care changes just as rapidly. It goes without saying that the cost to deliver these services is astronomical at times. Non-profit hospitals, such as St. Francis, have to figure out how to provide for these costs and still afford to provide quality care for Kansans who have no ability to pay for that care. Being a non-profit means that in the event of a liquidation no individual will benefit personally. The proceeds of the operation go to another non-profit. It does not mean that they can print money. Tough budgeting decisions are required. Sometimes this means that some services are contracted for because it is more cost effective. Some contract for security services, dietary services and laundry services. Some charge physicians for the use of their paging system. St. Francis Regional Medical Center has been asked by a Municipal Court Judge to allow drug and alcohol offenders to stay in the hospital one weekend a month as a part of a court ordered diversion and confinement program. The hospital is not asked to provide the counseling, only the safe place for this program, safe, meaning, in the event medical treatment is necessary. St. Francis will be reimbursed for its cost. They want to participate but they are concerned. They want to welcome the American Cancer Society or the American Heart Association in their doors to provide free to low-cost testing. Other organizations such as home health programs, hospice programs, Easter Seals have a natural association

with hospitals and consolidation of services and cooperative action is a benefit to Kansans. They want to do these things and know that if they acted in good-faith, they will not be punished. I can assure you that when a mistake costs 2-3 million dollars, more than good-faith will be exercised.

Also, I am requesting this Committee give serious consideration to striking the language on page 47. The word "necessary" in my opinion adds nothing and may put the exemption back to where it was before the change.

Lastly, I want to say how proud I am to be here today representing St. Francis Regional Medical Center. They recognize that Kansas gives them a tax exemption but Kansans get so much in return for your generosity. They want to continue to serve this state and her citizens.

Board of Johnson County Comm'rs v. St. Joseph Hosp.

No. 60,125

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF JOHNSON,
Appellee, v. ST. JOSEPH HOSPITAL OF KANSAS CITY, MO., *Appel-*
lant.

SYLLABUS BY THE COURT

TAXATION—*Ad Valorem Taxes—Exemption of Not-for-Profit Missouri Corporation Doing Business in Kansas*. In an appeal concerning an order of the Board of Tax Appeals, it is *held*: Under K.S.A. 1986 Supp. 79-201b, the property of a not-for-profit Missouri hospital corporation, authorized to do business as a not-for-profit corporation in Kansas, and which property was stored within this state and is used exclusively for hospital purposes, was properly held to be exempt from Kansas ad valorem taxes. The statute does not require that the hospital facility be situated within this state.

Appeal from Shawnee district court; JAMES P. BUCHELE, judge. Opinion filed June 12, 1987. Reversed.

Linda Ann Terrill, of Mitchell, Kristl & Lieber, of Overland Park, argued the cause and was on the brief for the appellant.

Bernis G. Terry, assistant county counselor, argued the cause and was on the brief for the appellee.

The opinion of the court was delivered by

MILLER, J.: This is an appeal from an order of the district court of Shawnee County, reversing an order of the Board of Tax Appeals of the State of Kansas. The Board found that certain personal property belonging to St. Joseph Hospital of Kansas City, Missouri, (St. Joseph) and warehoused in Kansas was exempt from ad valorem taxation; the district court reversed. St. Joseph appeals. The appellee is the Board of County Commissioners of Johnson County, Kansas.

The only issue on appeal is whether personal property stored in Kansas is exempt from Kansas ad valorem taxation when it is used exclusively for hospital purposes by a Missouri not-for-profit corporation which is authorized to do business as a not-for-profit corporation in Kansas.

The scope of review in an appeal from a decision of an administrative agency is quite limited. In *Kansas State Board of Healing Arts v. Foote*, 200 Kan. 447, Syl. ¶¶ 1, 2, 436 P.2d 828 (1968), we stated the rule as follows:

Board of Johnson County Comm'rs v. St. Joseph Hosp.

"A district court may not, on appeal, substitute its judgment for that of an administrative tribunal, but is restricted to considering whether, as a matter of law, (1) the tribunal acted fraudulently, arbitrarily or capriciously, (2) the administrative order is substantially supported by evidence, and (3) the tribunal's action was within the scope of its authority.

"In reviewing a district court's judgment, as above, this court will, in the first instance, for the purpose of determining whether the district court observed the requirements and restrictions placed upon it, make the same review of the administrative tribunal's action as does the district court."

Decisions of the Board of Tax Appeals are subject to the same limited judicial review as are the decisions of other administrative tribunals. *Board of Johnson County Comm'rs v. J. A. Peterson Co.*, 239 Kan. 112, 114, 716 P.2d 188 (1986); *T-Bone Feeders, Inc. v. Martin*, 236 Kan. 641, 645, 693 P.2d 1187 (1985).

Whether certain property is exempt from ad valorem taxation is a question of law if the facts are agreed upon. *T-Bone Feeders, Inc. v. Martin*, 236 Kan. at 645. In this case, there are no factual disputes. St. Joseph Hospital is a Missouri not-for-profit corporation, authorized to do business in Kansas. St. Joseph's main facility is a hospital located one block east of the Kansas line in Kansas City, Missouri. St. Joseph stores medical supplies, medical equipment, and office furniture at a material management center in Overland Park, Kansas. No wholesale or retail sales are made from the center. The items are merely stored there and are supplied to the hospital on request, and the hospital remains the owner of the supplies, equipment, and furniture at all times. The property is used exclusively for hospital purposes.

St. Joseph applied to the Johnson County Appraiser for an ad valorem tax exemption for the property stored at the material management center and used for hospital purposes at St. Joseph Hospital in Kansas City, Missouri. The county appraiser recommended that the exemption be denied and that a hearing be held before the Board of Tax Appeals. At that hearing, the Johnson County Commissioners opposed the exemption, contending that the statutory exemption applies only to property used by hospitals located in Kansas. The Board of Tax Appeals granted the exemption, and denied a motion for rehearing. The Board of County Commissioners then took an appeal to the district court of Shawnee County. The district court reversed, finding that the statutory exemption applies only to hospitals operating in Kan-

Board of Johnson County Comm'rs v. St. Joseph Hosp.

sas. The court found that the Board of Tax Appeals incorrectly stated and applied the law, and held that the Board's order was not substantially supported by the evidence because St. Joseph did not clearly show that it was entitled to an exemption. St. Joseph brings this appeal.

The action of the Board of Tax Appeals was clearly within its statutory authority. K.S.A. 1986 Supp. 79-213. Thus, under the limits of review available under the rule stated above, the only remaining questions are whether the Board of Tax Appeals acted fraudulently, arbitrarily, or capriciously, and whether the Board's order is substantially supported by the evidence.

The rules and legal principles governing Kansas cases in which exemption from ad valorem taxation is claimed were stated by Justice (now Chief Justice) Prager in the *T-Bone Feeders* case as follows:

"(1) Taxation is the rule; exemption is the exception. All doubts are to be resolved against exemption and in favor of taxation. [Citation omitted.]"

"(2) Constitutional and statutory provisions exempting property from taxation are to be strictly construed. [Citations omitted.]"

"(3) The burden of establishing exemption from taxation is on the one claiming it. [Citation omitted.]"

"(4) The question is not whether or not the property is used partly or even largely for the purpose stated in the exemption provisions, but whether it is used exclusively for those purposes. [Citations omitted.]"

"(5) The phrase 'used exclusively' in the 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. [Citation omitted.]" 236 Kan. at 645-46.

The statutory exemption for hospital property is contained within K.S.A. 1986 Supp. 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, . . . which 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."

K.S.A. 65-425, insofar as pertinent here, states as follows:

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"As used in this act: (a) 'General hospital' means an establishment with an organized medical staff of physicians; with permanent facilities that include inpatient beds; and with medical services, including physician services, and continuous registered professional nursing services for not less than twenty-four (24) hours of every day, to provide diagnosis and treatment for four or more nonrelated patients who have a variety of medical conditions.

" 'Special hospital' means an establishment with an organized medical staff of physicians; with permanent facilities that include inpatient beds; and with medical services, including physician services, and continuous registered professional nursing services for not less than twenty-four (24) hours of every day, to provide diagnosis and treatment for four or more nonrelated patients who have specified medical conditions.

"(i) 'Hospital' means 'general hospital' or 'special hospital.' "

K.S.A. 65-425 is the first section of an act providing for the licensing, inspection, and regulation of hospitals within the State of Kansas.

St. Joseph is a "hospital" as defined in 65-425. There is no dispute that the property stored in St. Joseph's material management center is used exclusively for hospital purposes. Finally, there is no dispute that St. Joseph Hospital of Kansas City, Missouri, is a not-for-profit corporation organized under the laws of Missouri and authorized to do business in Kansas as a foreign, not-for-profit corporation.

St. Joseph meets the precise literal requirements of K.S.A. 1986 Supp. 79-201b. The Board of Tax Appeals' order was substantially supported by the undisputed evidence, and it cannot be said that the Board acted arbitrarily, capriciously, or fraudulently, unless it incorrectly applied the law.

The district court found, in essence, that there was implied in 79-201b an additional requirement: that the hospital must be operating in Kansas in order to qualify for exempt status. The court relied upon *State v. Holcomb*, 85 Kan. 178, 116 Pac. 251 (1911), and *Trustees of Marsh Foundation v. Railway Co.*, 116 Kan. 175, 225 Pac. 1029 (1924). *Holcomb* was concerned with the possible exemption of a waterworks plant located wholly in Wyandotte County, Kansas, but owned by the City of Kansas City, Missouri. The applicable constitutional provision and statutes mentioned the exemption of state, county, city, and munic-

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ipal property, but made no mention of property owned by any governmental unit outside of the State of Kansas. We said:

"The legislature, in enacting laws relating to taxation and to exemption from taxation, must be deemed to have understood the extent of its power and to have had in mind our own state and the counties, cities, and school districts within the State for which it was empowered to legislate. [Citations omitted.] It is true that the constitutional provision relating to taxation [Const. art. 11, § 1] does provide that all property used exclusively for 'municipal' purposes shall be exempt, but the fact that the provision does not expressly say that the constitution is made for Kansas is not a good basis for an inference that the framers were attempting to regulate and protect the municipalities of other states." 85 Kan. at 181-82.

While the language of the *Holcomb* opinion would indicate that the property of a Kansas City, Missouri, hospital would be subject to Kansas taxation, we note that the statutes under which *Holcomb* was decided do not mention property owned by the municipalities of other states, while the act now before us specifically includes the property of hospitals operated by not-for-profit corporations organized under the laws of another state and duly admitted to engage in business in this state. We also note that the legislature subsequently determined that the Kansas City, Missouri, waterworks located within Kansas should be exempt from Kansas ad valorem taxes. K.S.A. 79-201a *Fourteenth*; K.S.A. 79-205. By those enactments, the legislature specifically authorized the exemption of property located in Kansas but owned by a Missouri municipal corporation.

Trustees of Marsh Foundation involved the exemption from Kansas inheritance taxes of a bequest to a charitable home and school in Ohio. In finding the bequest taxable, we reviewed the relevant statutory and constitutional provisions and concluded that the exemption from taxation of the property of educational or charitable institutions provided for in the Constitution and statutes refers to educational and charitable institutions of Kansas, and not to those of another state. We said:

"The exemption from taxation of the property of educational or charitable institutions provided for in the constitution and statutes refers to educational and charitable institutions of Kansas and not to those of another state." 116 Kan. 175, Syl. ¶ 1.

Marsh was decided upon judicial interpretation of § 1 of art. 11 of the Constitution of Kansas, and upon R.S. 1923, 79-1501. Both the Constitution and the statute contain only general language exempting the property of charitable institutions. In con-

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trast, the exemption provided in the present case is based upon the more specific language which clearly exempts property used by hospitals operated by foreign not-for-profit corporations which are authorized to do business as not-for-profit corporations in Kansas. Also, as is the case with the judicial pronouncement in *Holcomb*, the *Marsh* doctrine has been discarded by the legislature, and bequests, legacies, devises, or gifts to any charitable organization organized under the law of the United States, any state, the District of Columbia, or any possession of the United States are now exempt from inheritance taxes in Kansas. See K.S.A. 79-1537c, which adopts the description of charitable organizations found in 26 U.S.C. § 170(c) (1982).

There are three factors which weigh in favor of the district court's decision. First, as this court noted in *Marsh*, the rationale behind tax exemptions for charitable organizations is that these entities confer some benefit on Kansas residents. Second, as the *Holcomb* court noted, the legislature's failure to specifically limit an exemption's applicability to Kansas organizations does not necessarily mean that the legislature intended to protect out-of-state hospitals. And finally, the legislature's authority to exempt property from taxation is limited. In *Topeka Cemetery Ass'n v. Schnellbacher*, 218 Kan. 39, 42, 542 P.2d 278 (1975), we noted:

"The legislature has the authority to provide that property other than that named in the constitution may be exempt from taxation, but this exemption must have a public purpose and be designed to promote the public welfare."

While these factors support the district court's opinion, they do not require its affirmance. First, St. Joseph Hospital does confer a benefit on Kansas residents. The district court found that about 25% of the patients at the hospital are Kansas residents. The hospital is a large metropolitan one, situated only one block from the eastern border of this state, adjacent to the highly populated area in northeast Johnson County. Second, K.S.A. 1986 Supp. 79-201b refers only to K.S.A. 65-425, which defines hospitals in general, but does not include any license or geographic requirements. The legislature could have easily referred to K.S.A. 65-425 *et seq.*, which would have included the Kansas licensing statute, had the legislature intended to limit the tax exemption to Kansas hospitals. We note that the legislature has specifically

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referred to licensed hospitals in other sections of the Kansas statutes. See K.S.A. 65-442 and K.S.A. 65-450. Third, 79-201b explicitly applies to property of hospitals operated by foreign not-for-profit corporations authorized to do business as such in Kansas. Again, the legislature could have easily limited the exemption to hospitals operating in Kansas. Finally, we note that under K.S.A. 79-1537c, cited above, all bequests, legacies, devises, or gifts made now to out-of-state charitable organizations would be exempt from Kansas inheritance taxes. This is true whether the organization confers a direct benefit upon Kansas citizens or not. There is no question here but that St. Joseph Hospital provides services to and thus confers a direct benefit upon residents of this state.

Giving the statute strict construction, we conclude that there is no requirement that the hospital be operated in Kansas. The order of the Board of Tax Appeals was within the scope of its authority; it is supported by substantial evidence; and the Board's action is not fraudulent, arbitrary, or capricious. It did not misconstrue or misapply the statute.

Accordingly, the order of the district court is reversed and the order of the Board of Tax Appeals of the State of Kansas, granting the application of St. Joseph Hospital for exemption from ad valorem taxes for the property located at its material management center, 9245 Flint, in Overland Park, Kansas, is affirmed.

Board of Johnson County Comm'rs v. Ev. Luth. Good Samaritan Soc.

No. 56,668

IN RE: APPEAL OF THE BOARD OF COUNTY COMMISSIONERS OF JOHNSON COUNTY, KANSAS, BOARD OF COUNTY COMMISSIONERS OF JOHNSON COUNTY, Appellant, v. EV. LUTHERAN GOOD SAMARITAN SOCIETY-GOOD SAMARITAN TOWERS, Appellee.

(694 P.2d 455)

SYLLABUS BY THE COURT

1. TAXATION—*Exemption from Ad Valorem Taxes for Low Income Housing for the Elderly—Application of Exemption to Apartment Building That Rents to Both Low Income Elderly and Handicapped Non-elderly Persons.* The exemption from ad valorem taxation granted by K.S.A. 79-201b *Fourth* for low income housing for elderly persons, the construction of which has been financed under the National Housing Act, is discussed and held applicable to an apartment building renting to both low income elderly persons and handicapped non-elderly persons pursuant to federal regulations for the operation of such facilities.
2. SAME—*Exemption from Ad Valorem Taxes for Low Income Housing for the Elderly—Financial Statements of Individual Tenants Not Pertinent to Determination of Exemption.* Financial statements of individual tenants are not pertinent to a determination of whether a housing facility is entitled to an exemption from ad valorem taxation pursuant to K.S.A. 79-201b *Fourth*.

Appeal from Shawnee district court, E. NEWTON VICKERS, judge. Opinion filed January 26, 1985. Affirmed.

Bruce F. Landeck, assistant county counselor, argued the cause, and Philip S. Harness, assistant county counselor, was with him on the briefs for appellant.

Eugene T. Hackler, of Hackler, Londerholm, Corder, Martin & Hackler, Chartered, of Olathe, argued the cause, and Robert C. Londerholm, of the same firm, was with him on the brief for appellee.

The opinion of the court was delivered by

McFARLAND, J.: This is an appeal by the Johnson County Board of County Commissioners from a decision of the Kansas State Board of Tax Appeals granting a South Dakota not-for-profit corporation, Ev. Lutheran Good Samaritan Society, exemption from ad valorem taxation on a nine-story building in Olathe, Kansas, known as Olathe Towers. The exemption was granted based upon K.S.A. 79-201b *Fourth and Fifth*. The Board of County Commissioners appealed the decision to the Shawnee County District Court which, subsequently, affirmed the BOTA decision. The matter is before us on the appeal therefrom by the Board of County Commissioners.

The following two issues are raised on appeal:

1. Did BOTA and the district court err in holding Ev. Lutheran

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Good Samaritan Society was entitled to exemption from ad valorem taxation pursuant to K.S.A. 79-201b *Fourth and Fifth* on the property known as Olathe Towers?

2. Is the term "lowest feasible cost" utilized in K.S.A. 79-201b *Fifth* impermissibly vague?

Ordinarily, the proper procedure would be to determine the constitutional issue first. However, it is believed reversing the usual order is warranted by virtue of the issues raised.

The facts are essentially uncontroverted. The basic dispute raised in the first issue is whether, under the facts, applicant is entitled to exemption from ad valorem taxation.

Highly summarized, the facts of the use of the property are as follows. The improved real estate involved herein consists of 3.52 acres commonly described as 1425 East College Way, Olathe, Kansas. The property is owned by Good Samaritan Society, Inc., a South Dakota not-for-profit corporation. Ev. Lutheran Good Samaritan Society, Inc., is a North Dakota not-for-profit corporation founded in 1922 and is the parent corporation of the subsidiary, Good Samaritan Society, Inc. The boards of directors and operating policies of both corporations are identical. Both parent and subsidiary corporations have exemption letters from federal income taxation under § 501(c)(3) of the Internal Revenue Code, and both corporations are authorized to transact business in Kansas. The housing project on the subject property is operated by Ev. Lutheran Good Samaritan Society, Inc. (hereinafter referred to as "applicant"), and there is no challenge to said corporation being the proper entity to file the exemption application herein.

Situated on the subject real estate is a nine-story, 150-apartment building called "Olathe Towers." Direct loan financing of the construction was obtained by applicant from the Department of Housing and Urban Development (HUD) under § 202 of the National Housing Act in the amount of \$5,426,700.00. The forty-year mortgage provides for monthly payments of \$36,792.41. Sec. 202 of the National Housing Act provides in part that low income for the elderly projects are to operate in such a way that residents will not pay more than twenty-five per cent of their income for rent, based upon scheduled maximum annual income for various sized families. Olathe Towers contains 141 one-bedroom apartments and eight two-bedroom apartments plus the resident

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exemption from ad valorem taxation under *Fourth and Fifth* on

in K.S.A. 79-201b

to determine the propriety of reversing the assessment as raised.

The basic dispute is that the applicant is not a resident.

The property are as herein consists of 150 apartment units at College Way, Good Samaritan

Corporation. Ev. Lutheran of Dakota not-for-profit corporation.

The boards of directors are identical and have exemption

under 501(c)(3) of the Internal Revenue Code. The court is authorized to

act on the subject property owned by the Good Samaritan Society, and there is no separate entity to file the

story, 150-apartment units. The Department of Housing and Urban Development under § 202 of the National Housing Act.

\$10,000. The forty-four units cost \$36,792.41. Section 202 of the National Housing Act provides that low income

rental housing for elderly persons that residents pay their income for the rental of one or more bedrooms apart-

ments. The resident

manager's apartment. Neither meals nor medical services are included in the rentals charged. Occupancy began February 1, 1981. The exemption sought and granted is for 1981 and years subsequent thereto.

As of the date of the hearing before the BOTA (December 9, 1981) there was apparently one hundred per cent occupancy of the premises. The controversy herein rages over the occupancy of eight apartments. Four apartments are rented to elderly persons who do not qualify for federal rent subsidies—that is, their incomes are in excess of HUD guidelines for subsidization. Four other apartments are rented to handicapped individuals who are not elderly. The appellant Board of County Commissioners contends these eight rentals preclude the granting of exemption from ad valorem taxation.

Article 11, § 1, of the Kansas Constitution provides in pertinent part:

"All property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes, and all household goods and personal effects not used for the production of income, shall be exempted from property taxation."

K.S.A. 79-201b provides in pertinent part:

"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:

"*Fourth.* All real property and tangible personal property, actually and regularly used exclusively for housing for elderly persons having a limited or lower income, assistance for the financing of which was received under the national housing act and acts amendatory thereof and supplemental thereto, and 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

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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.

"The provisions of this section shall apply to all taxable years commencing after December 31, 1976."

Appellant calls our attention to our well-established case law which mandates that constitutional and statutory provisions exempting property from taxation are to be strictly construed. Illustrative of this principle is *National Collegiate Realty Corp. v. Board of Johnson County Comm'rs*, 236 Kan. 394, 690 P.2d 1366 (1984).

Essentially this issue breaks down into the following three areas of claimant:

1. Rental of four apartments to non-elderly handicapped persons precludes exemption under K.S.A. 79-201b *Fourth* or *Fifth* as the property is not exclusively used for the housing of elderly persons;

2. Rental of apartments to four persons not qualifying for federal rent subsidies precludes exemption under K.S.A. 79-201b *Fourth* or *Fifth*;

3. The "exclusive use" requirement contained in K.S.A. 79-201b *Fourth* and *Fifth* mandates that the property be exclusively used for purposes set forth in either *Fourth* or *Fifth* and a hybrid utilization destroys any exemption.

We shall first consider the argument relative to the legal effect of the presence of the physically handicapped non-elderly persons in the facility.

K.S.A. 79-201b grants exemption to property "used exclusively for housing for elderly persons having a limited or lower income, assistance for the financing of which was received under the national housing act and acts amendatory thereof and supplemental thereto" (Emphasis supplied.)

12 U.S.C. § 1701q (1982) provides in part:

"(a)(1) The purpose of this section is to assist private nonprofit corporations, limited profit sponsors, consumer cooperatives, or public bodies or agencies to provide housing and related facilities for elderly or *handicapped* families.

"(6) In reviewing applications for loans under this section, the Secretary may consider the extent to which such loans—

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Olathe Realty Corp.
Kan. 394, 690 P.2d

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nonprofit corporations,
public bodies or agencies to
handicapped families.

Therefore, the Secretary may

(A) will assist in stabilizing, conserving, and revitalizing neighborhoods and communities;

(B) will assist in providing housing for elderly and handicapped families in neighborhoods and communities in which they are experiencing significant displacement due to public or private investment;

“(d) Definitions as used in this section—

“(1) The term ‘housing’ means structures suitable for dwelling use by elderly or *handicapped* families which are (A) new structures, or (B) provided by rehabilitation, alteration, conversion, or improvement of existing structures which are otherwise inadequate for proposed dwelling use by such families.

(4) The term ‘elderly or *handicapped* families’ means families which consist of two or more persons and the head of which (or his spouse) is sixty-two years of age or over or is *handicapped*, and such term also means a single person who is sixty-two years of age or over or is *handicapped*. A person shall be considered *handicapped* if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered *handicapped* if such person is a developmentally disabled individual as defined in section 102(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1950. The Secretary shall prescribe such regulations as may be necessary to prevent abuses in determining, under the definitions contained in this paragraph, the eligibility of families and persons for admission to and occupancy of housing constructed with assistance under this section.” (Emphasis supplied.)

It is uncontroverted that the handicapped tenants in Olathe Towers meet the definition of handicapped persons contained in 12 U.S.C. § 1701q(d) (1982).

Olathe Towers was planned so that certain apartments were specifically designed for use by physically handicapped persons. It is true that elderly persons may be physically handicapped and require usage of such specially designed facilities and inclusion thereof in the building design does not establish, by itself, that the building was designed to accommodate non-elderly handicapped persons. Applicant contends it is required by amendments to the National Housing Act to accept as tenants handicapped persons as defined by 12 U.S.C. § 1701q(a) (1982) and that the legal effect of this is to broaden the exemption granted in K.S.A. 79-201b *Fourth*. This point has merit.

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Prior to 1964 the National Housing Act provided direct loan financing for construction of homes for low income elderly persons. Significant changes occurred in 1964 when the act was amended by striking out the term "elderly families and elderly persons" wherever it appeared and substituting therefore "elderly or handicapped families." Numerous amendments and supplements to the Act occurred in the same legislation to broaden eligibility for federally financed housing to include handicapped as well as elderly families. See National Housing Act, ch. 847, 48 Stat. 1246 (1934) (codified at 12 U.S.C. § 1701 *et seq.* [1982]) amended by the Housing Act of 1964, Pub. L. No. 88-560, Title II, § 201 *et seq.*, 78 Stat. 783 *et seq.* (1964). The previously cited 12 U.S.C. § 1701q (1982) was a part of the 1964 amendments to the Act.

Therefore, the handicapped residents of Olathe Towers are there by virtue of federal legislation authorizing their presence in such facilities constructed by direct loan from National Housing Act funds. Appellant does not challenge this fact. Rather, appellant argues that K.S.A. 79-201b *Fourth* states exemption from ad valorem taxation shall be granted for such federally financed facilities *used exclusively* for low income elderly and, hence, under strict construction, the presence of the handicapped persons therein establish applicant is not entitled to the exemption. We do not agree. Appellant's position ignores the provision of K.S.A. 79-201b *Fourth* which states:

"*Fourth.* All real property . . . actually and regularly used exclusively for housing for elderly persons having a limited or lower income, assistance for the financing of which was received under the *national housing act and acts amendatory thereof and supplemental thereto* . . ." (Emphasis supplied.)

Appellant's rigid interpretation of K.S.A. 79-201b *Fourth* would effectively destroy the exemption. The National Housing Act, by acts amendatory and supplemental thereto, grants eligibility for residence in such facilities to handicapped persons. The clear intent of K.S.A. 79-201b *Fourth* was to exempt such public housing from ad valorem taxation. The "acts amendatory and supplemental thereto" language of K.S.A. 79-201b *Fourth* clearly shows that exemption is to be granted to facilities constructed under auspices of the National Housing Act as it originally existed and as it might be subsequently amended or supplemented.

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It provided direct loan for low income elderly in 1964 when the act was amended to include low income elderly families and elderly persons. The act substituting therefore "elderly persons" and "elderly persons" amendments and the same legislation to amend housing to include low income elderly. See National Housing Act at 12 U.S.C. § 1701 et seq. of 1964, Pub. L. No. 88-151, 83 Stat. 381 (1964). The act was a part of the 1964

of Olathe Towers are authorizing their presence in from National Housing Act. This fact. Rather, *Fourth* states exemption is provided for such federally subsidized low income elderly and, presence of the handicapped person is not entitled to the same position ignores the fact that states:

"regularly used exclusively for low income, assistance for the elderly under the National Housing Act and acts thereunder." (Emphasis supplied.)

K.S.A. 79-201b *Fourth*. The National Housing Act, as amended thereto, grants eligibility to low income and handicapped persons. The act was to exempt such persons. The "acts amendatory to K.S.A. 79-201b *Fourth*" amended housing to facilities constructed under the National Housing Act as it originally amended or sup-

Appellant additionally argues that the exemption is limited to facilities "used exclusively" for low income elderly on the basis that K.S.A. 79-201b *Fourth* was enacted in 1975—subsequent to the 1964 amendments to the National Housing Act previously discussed. Appellant reasons that inasmuch as handicapped persons had already been granted eligibility to live in such facilities by federal legislation, then, if the exemption was intended to include such persons, the legislature would have amended K.S.A. 79-201b *Fourth* to specifically include handicapped persons. We do not agree. The legislative history of K.S.A. 79-201b *Fourth* clearly shows it was a part of a general codification of ad valorem tax exemption laws. See 1975 Session Laws of Kansas, ch. 495 and Minutes of the House Committee on Assessment and Taxation, March 12, 1975.

The second aspect of this issue is whether the presence of four elderly tenants on the premises whose incomes are above federal guidelines for rent subsidies precludes exemption from ad valorem taxation. The battle on this question has been fought on rather curious terrain. The BOTA and the district court granted the applicant exemption on the basis of K.S.A. 79-201b *Fourth* and *Fifth*. Section *Fourth* grants the exemption to facilities for low income elderly (and handicapped, as previously determined) persons where the construction of the facility has been financed by the National Housing Act. Section *Fifth* grants exemption to housing facilities for low income elderly persons where:

"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."

Although not clearly spelled out in either the BOTA or district court opinions herein, the granting of the exemption in both K.S.A. 79-201b *Fourth* and *Fifth* apparently comes about from a conclusion that the handicapped residents qualify under *Fourth* and the non-rent subsidized elderly residents qualify under *Fifth*. This conclusion is consistent with the arguments of the parties herein. Bringing K.S.A. 79-201b *Fifth* into the fray spawns the previously referred to arguments relative to the constitutionality of *Fifth* and the propriety of hybridizing exemptions. We do not believe applicant's exemption requires consideration of K.S.A. 79-201b *Fifth*.

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Let us look closely at K.S.A. 79-201b *Fourth*, repeated at this point for simplification:

"Fourth. All real property and tangible personal property, actually and regularly used exclusively for housing for elderly persons having a limited or lower income, *assistance for the financing of which was received under the national housing act* and acts amendatory thereof and supplemental thereto, and 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." (Emphasis supplied.)

To what does the term "assistance for the financing of which was received under the national housing act" refer? Note use of "*was*" received. Clearly this can refer only to construction costs, as rent subsidies are ongoing items of expenditure. The use of the term "financing," again, indicates construction as opposed to rent subsidies of residents. Yet the case is argued along the lines that the presence of elderly residents whose rents are not federally subsidized and who personally pay the full rent somehow requires the applicant to seek exemption under K.S.A. 79-201b *Fifth*. We do not agree.

The exemption provided for in K.S.A. 79-201b *Fifth* requires the facility to be operated on a below cost or on a "lowest feasible cost" basis. Nothing comparable is found in *Fourth*. Why? The answer is simple. It is common knowledge that when construction of public housing for the elderly (and handicapped) is financed through the National Housing Act, the operation of the facility is subject to ongoing federal control. Resident eligibility, amount of rent to be charged, amount of rent subsidy, operational expenses, etc., are the subjects of a plethora of federal statutes and regulations. To gain the tax exemption set out in *Fourth*, an applicant does not need to show qualifying operating costs—only that it is a qualifying not-for-profit corporation operating a National Housing Act facility for the elderly (and qualified handicapped). Any such operation not in compliance with the mass of regulations is subject to penalties including the loss of federal rent subsidies. The federal government can effectively shut down the facility for noncompliance. The legislature in enacting K.S.A. 79-201b *Fourth* obviously relied

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Fourth, repeated at this

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upon federal regulations to assure the goals and public purposes of the program designed to provide adequate housing for low income elderly and handicapped persons have been and continue to be met. The presence of the four elderly residents in Olathe Towers not receiving rent subsidies is a matter between applicant, as operator of the facility, and HUD. Burrowing through the financial statements of the elderly residents of Olathe Towers is neither required nor pertinent to a determination of applicant's eligibility for tax exemption under K.S.A. 79-201b Fourth.

We therefore conclude Olathe Towers is entitled to exemption from ad valorem taxation based upon K.S.A. 79-201b Fourth. By virtue of this determination, other issues raised need not be addressed.

The judgment is affirmed.



BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE APPLICATION
OF NATIONAL COUNCIL OF JEWISH WOMEN
FOR EXEMPTION FROM AD VALOREM
TAXATION IN JOHNSON COUNTY, KANSAS

Docket No. 0526-87-TX

ORDER DENYING REHEARING

Now, on this 23rd day of September, 1987 the above captioned matter comes on for consideration and decision by the Board of Tax Appeals of the State of Kansas.

The Board, being fully advised in the premises, 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:

Office Equipment and
personal property.
3. The property at issue is the administrative office of this applicant. As such the property is used in furtherance of all programs administered by National Council of Jewish Women (NCJW). The Board's original order cited several programs which were not exempt operations. We adhere to those findings.
4. NCJW admits that the organization conducts non-exempt purposes but claims they are minimal in scope and insubstantial in nature. K.S.A. 1986 Supp. 79-201 Second. The record reflects a number of social events, teas and luncheons offered to members and the general public. NCJW is actively engaged in lobbying efforts. Our review indicates a substantial commitment in both time and resources to those non-exempt activities. Nothing shows the cost of these events or programs. Thus, the fees charged are not comparable to determine whether 'reimbursement' takes place.
5. NCJW argues that Kansas City District Advisory Board v. Board of County Commissioners, 5 K.A. 2d 538, 620 P.2d 344 (1980) authorizes exemption for this property. We cannot agree. That case denied exemption where the property was used for both exempt and non-exempt purposes. Further, the evidence shows NCJW does not limit its activities to a specific group and actively recruits member/participants for its programs. The holding in Advisory Board does not support exemption.
6. NCJW's request for rehearing presents no new evidence for the Board's consideration. We find nothing in the evidence or argument to change the result in this case.

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.



SO ORDERED.

Keith Farrar
KEITH FARRAR, CHAIRMAN

ROBERT C. HENRY, MEMBER

Fred L. Weaver
FRED L. WEAVER, MEMBER

Victor Elliott
VICTOR ELLIOTT, MEMBER

Conrad Miller, Jr.
CONRAD MILLER, JR., MEMBER

David C. Cunningham
DAVID C. CUNNINGHAM, SECRETARY

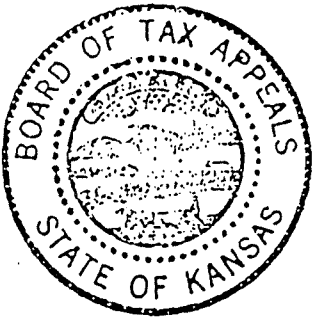
James P. Davidson
JAMES P. DAVIDSON, ATTORNEY

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

I, David C. Cunningham, 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. 0526-87-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 23rd day of September, 1987.

David C. Cunningham
SECRETARY



BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE APPLICATION
OF NATIONAL COUNCIL OF JEWISH WOMEN
FOR EXEMPTION FROM AD VALOREM
TAXATION IN JOHNSON COUNTY, KANSAS

Docket No. 0526-87-TX

O R D E R

Now, on this 22nd day of July, 1987, the above captioned matter comes on for consideration and decision by the Board of Tax Appeals of the State of Kansas.

The Board, being fully advised in the premises, 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 grievance application is described as follows:

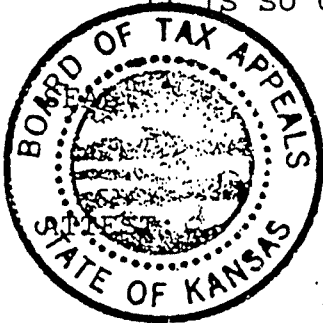
Office Equipment and
personal property.

3. The applicant is an organization engaged in various pursuits. The charter cites general interests in children, Israel, aging, constitutional rights and women's issues. The property is used in the council's administrative office. The Council supplied a good deal of evidence showing the Council's purpose, programs and operations. The evidence shows the Council provides volunteers for several charitable endeavors, i.e. parties for the blind, scholarships, CASA, etc. The evidence also establishes that the Council operates a thrift shop, lobbies legislators and holds social gatherings for its members.
4. The test for exemption is whether the property is used exclusively for charitable purposes. Lutheran Home, Inc. v. the Board of County Commissioners, 211 Kan. 270 505 P.2d 1118 (1973). This property is used for general administration. Thus, all of the Council's programs must be considered as the property is used for all activities.
5. The Board finds that a number of the programs offered by the Council provide a gift from one who has to one who has not. Lutheran Home, supra. Just as clearly the Council operates a profitable thrift shop and influences legislation.
6. The Board concludes the property is not exclusively used for exempt purposes. The request for exemption is denied.

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.

If any party to this appeal feels aggrieved by this decision, they may file a written request for a rehearing with this Board. The written request for rehearing shall set forth specifically and in adequate detail the particular and specific respects in which it is alleged that the Board's Order is unlawful, unreasonable, capricious, improper or unfair. The written request must be received within thirty (30) days of the certificate date of this Order. If, at the end of thirty days the Board has not received a written request for a hearing, this Order will become a final Order from which no further appeal is available.

IT IS SO ORDERED.



David C. Cunningham
DAVID C. CUNNINGHAM, SECRETARY

James P. Davidson
JAMES P. DAVIDSON, ATTORNEY

Keith Farrar
KEITH FARRAR, CHAIRMAN

ROBERT C. HENRY, MEMBER

Fred L. Weaver
FRED L. WEAVER, MEMBER

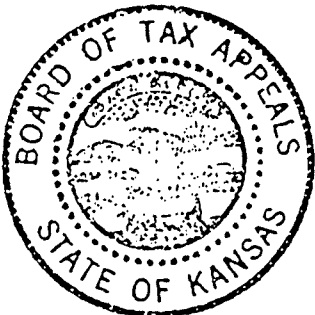
Victor Elliott
VICTOR ELLIOTT, MEMBER

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

I, David C. Cunningham, 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. 0526-87-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 28th day of July 1987.

David C. Cunningham
SECRETARY





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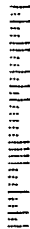


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Charlie Gillum

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June 9, 1987

Robert J. Leonard, Chief Counsel
Committee on Ways & Means, U.S. House of Representatives
Longworth House Office Building, Room 1102
Washington, D.C. 20515

Dear Sir:

I am a hearing aid audiologist who has been making my living by testing, fitting, and servicing hearing aids in the State of Kansas since 1967. I have always had to work hard and be very competitive to have an income that filled my obligations for raising my family. In the last three years I have run into a problem that I feel is very unfair competition that I have not been able to compete with. That problem is that I have another man and now a lady who covers about the same territory I do. Although they only come to town once or twice a month I estimate that they have taken half of my business. They do this by going into the hospitals, using their facilities and surrounding themselves with a medical atmosphere. In many cases the people feel that they are doing business with a doctor who is a hearing specialist. I feel that I should not have to compete with any tax free organization. Although the following doesn't all affect me it is happening in our state at the present time. If a non-profit organization, especially hospitals are allowed to continue this practice such as restaurants, drugs, hearing aids, answering services, laundry facilities, and etc. we will find more of our businesses shut down. I do not think this makes for a healthy economy. I feel a lot of the hospitals have a big adjustment to make and that is because they have had too much easy money in the past and have over extended themselves.

In closing I would just ask you to please help to let America's free enterprise system work. We can do this by keeping everything competitive and fair.

Very truly yours,

Charlie Gillum

CG:lm

Can Your Baby Hear?

Your child's most important learning will take place between birth and age four. So it's essential that your baby has usable hearing.

You can do some simple tests to find out if your baby has normal hearing. Check to see if the baby can do most of the things listed. If he can't, don't wait. He may have a hearing problem. Tell your doctor immediately.

If your doctor cannot accurately test your child, contact The Hearing Professionals at Lima Memorial Hospital. It is vital that your child receive proper medical help and whatever special training is needed, as early as possible.

Hearing Checklist

Birth to 3 months — Is startled by loud sounds; is soothed by mother's voice.

3 to 6 months — Turns eyes and head to search for location of sound; respond to mother's voice; imitates his own noises; enjoys rattles and other sound-making toys.

6 to 10 months — Responds to his own name, telephone ringing and someone's voice, even when not loud; understands "no", "bye-bye" and other common words.

10 to 15 months — Can point to or look at familiar objects or people when asked to do so; imitates simple words and sounds.

15 to 18 months — Follows simple spoken directions; first words are spoken; many more words spoken by 18 months.

Contact:

The Hearing Professionals
at

**Lima Memorial Hospital
Speech & Hearing Clinic
1001 Bellefontaine Ave.**

Lima, OH 45804

Ph. (419) 226-5070

Hours: Monday, Tuesday,

Thursday, Friday:

9 to 5

Wednesday: 8:30-8:30

Tuesday, May 5, 1987

Free Hearing Screenings and Hearing Aid Consultation

Wednesday, May 13

3-5:30 p.m. — 6-8:30 p.m.

at

Lima Memorial Hospital

The Hearing Professionals at Lima Memorial will hold an open house in the hospital's Speech & Hearing Clinic. Free, simple hearing screenings and consultation regarding hearing aids and other assistive listening devices will be offered. Information and demonstrations for all types of assistive listening devices will be offered. Reservations are not necessary.

The Hearing Professionals at

**Lima Memorial Hospital
Speech & Hearing Clinic
1001 Bellefontaine Ave.**

Lima, OH 45804

Ph: (419) 226-5070

Hours: Monday, Tuesday,

Thursday, Friday:

9 to 5

Wednesday: 8:30-8:30

Saturday, May 16, 1987

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ST. RITA'S MEDICAL CENTER-LIMA

DATE: MAY 19, 1987

TIME: 9-11 A.M. AND 1-3 P.M.

**PUTNAM COUNTY AMBULATORY
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DATE: MAY 23, 1987

TIME: 9-11 A.M. AND 1-3 P.M.

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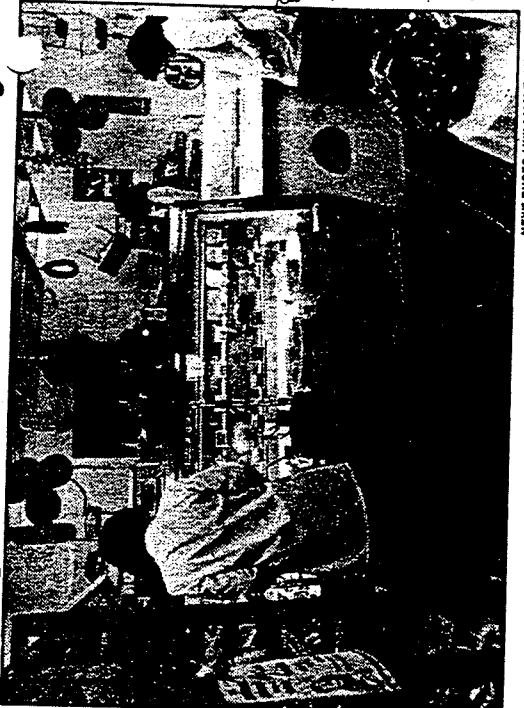
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DETROIT NEWS

PE-5-57770 A-3-10-27-85

Headlines reads:
Hospitals sell more than health care today



NEWS PHOTO / WILLIAM T. ANDERSON

Hospitals

They're selling more than health care today

From page 3A

"We can compete with any caterer in town," said Ron Schwark, the main force behind the hospital's Custom Cuisine Caterers. "And the food business also is good public relations for the hospital. It gets our name out in the community and lets people know that we're the same people who provide the hospital food."

HOW MUCH cash do all those croissants and crab meat salads bring in? Schwark said the food business is expected to net \$30,000 this year on \$200,000 in sales.

Administrators at Royal Oak's Beaumont Hospital talk in the same dollar and cents terms.

Beaumont is considered by many to be the local pioneer of diversification. In addition to owning the mall at Woodward and 13 Mile, Beaumont's for-profit subsidiary, Shared Services Inc., runs a travel agency and florist shop, markets medical equipment to the public and sells computer and management services to other medical concerns.

"We started in the mid-1970s to raise money to meet hospital costs and improve services," said Brian Dunphy, director of marketing services. "For competitive reasons, we prefer not to provide any income figures."

DETROIT'S HUTZEL Hospital pushes hot dogs and pizza for profit at football games in the Pontiac Silverdome. It also operates a savings and loan company and dry cleaning service. Officials said the business in the corporation for profit to support the main work of the hospital — to finance new kidney dialysis machines, an auditorium for medical school lectures and other in-house improvements.

Not all of Hutzel's hustles have brought success, however. Its gas station closed recently "because it wasn't profitable," said Lou Acierno, a hospital spokesman.

"We're trying to market the hospital."

"They now have to put more emphasis on surviving and less emphasis on care. They become merchants. I would put the blame on a system that doesn't recognize that quality health care must come first."

This diversification is a boon to management and marketing consultants who are needed more than ever by hospitals.

employers are curtailing insurance coverage and operating costs are increasing. While some traditionalists in the medical field are clucking their tongues over these nonmedical forays, there is general agreement that many hospitals have little choice. "The more that hospitals diversify, the more likely they are to survive," said Dr. Daniel R. Longo, director of research for the Joint Committee on Accreditation of Hospitals, the Chicago-based accrediting body of the nation's medical centers.

"THIS ATTEMPT to accumulate capital is an approach that's been used by other nonprofit enterprises for years. Hospitals now are realizing they can be innovative, too. They should be applauded for taking action in a period of dwindling resources." So, you can go to Mt. Clemens General for surgery or some dent treatments. The Macomb County hospital is battling the budget crunch with revenues collected from its General Store and Deli, a basement operation open to the public and offering a break from fast-food fare. A catering service for private parties also keeps the deli staff busy on weekends.

rested in buying a little pate de foie from Mt. Clemens General Hospital? About arranging for the dream vacation he Bahamas through Beaumont Hospital Royal Oak? Or, maybe getting a stack of press cards printed through Riverside Ophthalmic Hospital in Trenton? That's all possible today.

Shrinking revenues and growing expenses are prompting many Metro Detroit hospitals to offer such nonmedical, commercial services. It's a matter of survival.

FROM CATERING parties to dry cleaning, from real estate deals to fast-food outlets, more and more medical centers are reaching out of their antiseptic wards into germ-filled marketplaces. To their delight, many of the hospitals find that there is money to be made there. The money supplements the skyrocketing costs of healing people at a time when more hospital beds go unused and competition is on the rise, when

tal, to get our name out and let people know what we're doing," he said. "It's hard to get people from the suburbs to come to a Detroit hospital for treatment because of our location in the Medical Center. Most of our patients are Medicaid and Medicare and we lose money on every one of them. We need to get some good Blue Cross-Blue Shield patients in here."

The Horizon Health System, the parent corporation of Detroit Osteopathic Hospital, Warren's Bi-County Hospital and Riverside Osteopathic Hospital in Trenton, expects to net \$1 million next year from its 3-year-old commercial printing business. The corporation also runs a personnel agency and clinical engineering service that together generate more than \$2.5 million a year.

"OUR SOURCES of capital are becoming more and more scarce," said Philip Incarnati, executive vice-president and chief officer of the Detroit Osteopathic Hospital Corp. "We saw the need for this coming and there was a recognition that the market was changing."

Like many other hospital corporations, Horizon took advantage of its in-house resources to develop outside ventures. For years, for example, the company ran its own printing operations. So with trained employees and equipment on hand, it wasn't too difficult to expand.

Not only do these sideline businesses bring in extra cash, but they also cut expenditures once needed for contracted services.

BUT NOT all hospitals are ready to compete with Burger King or the likes of business entrepreneur Al Taubman. Southfield's Providence Hospital is sticking to medical montezymakers like its satellite offices in 24-hour trauma center in Novi.

"We are exploring a restructuring in the corporation for profit to support the main work of the hospital — but nothing as grand as Beaumont Hospital," said Pat Evans, director of community relations.

Other Metro Detroit hospitals rely on more traditional methods of fund raising. Children's Hospital, for example, depends on public donations, grants, estate gifts and benefits to fatten its operating budget.

The apparent success of nonmedical ventures does not draw applause from all medical professionals. Some express concern that the profit motive may interfere with the hospitals' primary mission — to provide quality health care.

"I DON'T blame the hospitals for doing what they are doing, but it raises a lot of questions," said Professor Sylvester Bank of the University of Michigan.

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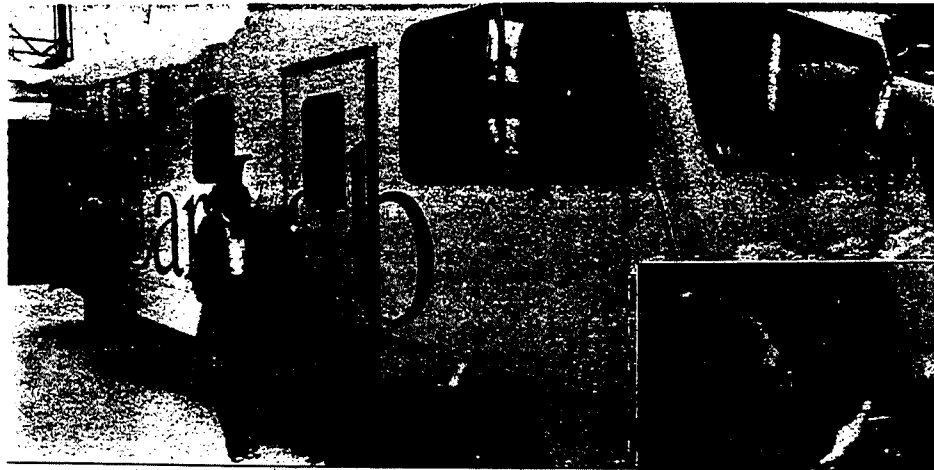
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What's more, once you have received the aids prescribed for you, we will not call the purchase final until you have had a trial period and you are completely satisfied.

If you've been shopping around, and you are worried about high costs, don't despair, our costs are very reasonable. A quality, top-of-the-line hearing aid should cost between \$375 and \$450. If two hearing aids are required, the total cost should not be higher than \$750.

If you have questions about your hearing, or that of a family member or friend, call us about the options, including the mobile Ear Lab, for free hearing screening for all age 55+.

Ask about our new hearing aids with noise suppression circuitry.

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Traverse City, MI

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Munson Medical Center's hearing specialists all have a Master's degree in the diagnosis and treatment of hearing loss and are certified by the American Speech and Hearing Association.

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- Attempt to sell you a hearing aid with a gimmick, such as "gold" circuitry.
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In Northern Michigan a premium, top of the line, hearing aid should cost between \$375 and \$450. If two hearing aids are purchased, the total cost should be no higher than \$750.

If you have questions about your hearing, or that of a family member or friend. If you are age 55+, we invite you to have a free hearing screening.

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Department at 922-9455**