

Subject

FILE
Opinion
Exemption

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STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

July 17, 1974

Opinion No. 74- 238

Arthur N. Turner
Newton City Attorney
110 East Sixth Street
Newton, Kansas 67114

Dear Mr. Turner:

You inquire concerning paragraph sixteenth of K.S.A. 79-201, which section was amended by 1974 Senate Bill 651, now ch. 427, L. 1974, to provide as follows:

"That the property described in this section, to the extent herein limited, shall be exempt from taxation:

* * *

"Sixteenth. All real property and taxible 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, in which charges to residents produce an amount which in the aggregate is less than the actual cost of operation of the housing facility and contributions to which are deductible under the Kansas income tax act; and all tangible 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."

You advise that at least one of the homes for the aged located in the City of Newton is now owned by a foreign corporation. It is contemplated that a separate corporation will be organized under the laws of the State of Kansas, which corporation will hold title to the real estate involved. The improvements on the real estate, to be used exclusively for the housing of elderly persons, will be operated by a separate corporation.

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You question whether, in order to entitle the property in question to exemption from taxation under the foregoing, it is necessary that the corporation which operates the property, "actually and regularly used exclusively for housing for elderly persons," also own the property so used. Under the quoted foregoing provision, the exemption depends not upon the ownership of the real and tangible personal property, but upon its use and operation: it must be "actually and regularly used exclusively for housing for elderly persons," and be "operated by a corporation organized not for profit under the laws of the state of Kansas. . . ." However, use is not the sole test of the exemption for all "intangible property including moneys, notes and other evidences of debt" described in the quoted provision. The provision exempts from taxation only that "intangible property . . . and income therefrom" which belongs exclusively to "such corporation," i.e., that corporation organized not for profit under Kansas law which operates the property for the required use, and which "intangible property . . . and income therefrom" is "used exclusively" for the purpose of such housing. Thus, although the character of the use is the determinative factor of the exemption of the real and tangible personal property involved, both ownership and use must be considered in determining the exemption of the intangible property enumerated in the section.

If you should have further questions concerning this matter, please do not hesitate to call upon us.

Yours very truly,


VERN MILLER
Attorney General

VM:JRM:jsm