



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

December 19, 1977

ATTORNEY GENERAL OPINION NO. 77- 395

Mr. John Dekker  
Director of Law  
The City of Wichita Department of Law  
City Hall - 13th Floor  
455 North Main  
Wichita, Kansas 67202

RE: Charitable Organizations - Wichita Police Department  
Benefit Fund Association

Synopsis: The Wichita Police Department Benefit Fund Association  
is a charitable organization subject to the require-  
ments of K.S.A. 17-1739, et seq.

Dear Mr. Dekker:

You request a clarification of this office's previous opinion,  
number 77-233, pertaining to the application of K.S.A. 17-1739, et  
seq. to the Wichita Police Department Benefit Fund (Wichita P.B.F.).  
Specifically, you wish us to reconsider whether the organization  
has charitable purposes within the meaning of the above statutes  
regulating charitable solicitations.

The Wichita P.B.F. was apparently established to provide life,  
sickness and accident benefits for its members. The benefits  
include payments for medical treatment and prescription drugs not  
covered by insurance, payments for eye glasses and dental care,  
and a small lump sum payment upon a member's retirement. The  
benefits are paid without regard to the member's financial need.

You point out that under the construction given to the phrase  
"charitable or benevolent purpose" in Lutheran Home, Inc. v. Board  
of County Commissioners, 211 Kan 270, 505 P.2d 1118, the Wichita  
P.B.F. would not be considered a charitable organization since there

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is no "gift from one who has to one who has not". You also note that this office has in the past advised two Fraternal Order of Police organizations that they are not subject to the requirements of K.S.A. 17-1739, et seq.

K.S.A. 17-1739 provides in pertinent part:

(a) "Charitable organization" or organization means any person who solicits and collects funds for charitable purposes or purposes alleged to be charitable ....

(F) "Charitable purpose" means any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose.

In my judgment, the rule of statutory construction requiring harmony and consistency in construing similar language does not require that the meaning given to "charity" by the Court in the Lutheran Home decision be used in applying K.S.A. 17-1739, et seq. Firstly, the legislature did not adopt the same language in the Charitable Solicitations Act as was construed in Lutheran Home. The inclusion of the additional terms "philanthropic, patriotic, or eleemosynary purpose" would seem to convey a different meaning than simply "charitable and benevolent". Secondly, the rule of statutory construction referred to applies only to statutes in pari materia. The tax statute construed in Lutheran Home, K.S.A. 79-201, has a different purpose than that of the charitable solicitations statutes. Although the statutes both refer to charitable purposes, the reference in the tax statutes is in furtherance of a scope and aim which is distinct and unconnected with that of the Charitable Solicitations Act. The statutes, therefore, do not appear to be in pari materia so as to require the same construction.

In fact, the different purposes of the statutes in question would seem to compel different constructions of "charitable purpose". The exemptions from taxation provided for in K.S.A. 79-201 are strictly construed to allow a release from the general obligation to pay taxes when it is justified by the receipt by the state of peculiar benefits from the property exempted. On the other hand, the charitable solicitations statutes are remedial in nature, intended to regulate charitable organizations which derive support from public contributions. The information required to be filed with the Secretary of State allows the state and the public to determine whether and to what extent the contributions are used for the intended purpose. With such information Kansas citizens who are constantly subject to appeals to their generous instincts

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can determine which organizations are worthy of support. A broad construction of "charitable purpose" is therefore necessary to effectuate the purposes of the Act.

The Court in Lutheran Homes noted that a liberal definition of charity is: [A] gift for some general public use or the accomplishment of some social interest or whatever proceeds from a sense of moral duty or feeling of kindness or humanity for the relief or comfort of another". 211 Kan at 276. A more specific definition was supplied by the Court in In re Estate of Freshour, 185 Kan 434 345 P.2d 889 (1959), when it stated that:

"[A] charity ... [is] a gift to be applied consistently with existing laws for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings, or works or otherwise lessening the burdens of government." (p 440) (emphasis changed, citations omitted.)

It would appear that an organization such as the Wichita P.B.F. which provides various health and medical benefits is charitable in nature under the above definitions. In A.T.&S.F. Hospital Association v State Commission of Revenue & Taxation, 173 Kan 312, 246 P.2d 299 (1952) and Nuns of St. Dominic v Younkin, 118 Kan 554, 235 P. 869 (1925), it was decided that a hospital owned and managed by a benevolent organization was charity. There seems to be no good reason to distinguish those cases from a situation where an organization is providing for medical needs indirectly through payments for costs not covered by insurance.

The fact that the organization's funds are applied only for the benefit of its members does not prevent the organization from having charity purposes. Although a charitable gift must be for a public use or benefit and for the benefit of an indefinite number of persons, this does not mean that the benefits cannot be limited to a particular group or class of persons, provided they are not designated and named individuals. E.g., Topeka, Presbyterian Manor v Board of County Commissioners, 195 Kan 90, 402 P.2d 802 (1965); A.T.&S.F. Hospital Association v State Commission of Revenue & Taxation, supra; In re Estate of Freshour, supra; and cases cited therein. In the A.T.&S.F. Hospital Association case the Court specifically held that a hospital, which provided only for members of the employees association owning and managing it, was a charitable use of property.

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Furthermore, the fact that the member beneficiaries of the Wichita P.B.F. are not normally considered objects of charity is not determinative of the question. In the Topeka Presbyterian Manor case, the Court quoted from Estate of Henderson, 17 Cal 2d 853, 112 P.2d 605, as follows:

"Relief of poverty is not a condition of charitable assistance. If the benefit conferred has a sufficiently widespread social value, a charitable purpose exists..." (195 Kan at 98.)

And, in Nuns of St. Dominic v Younkin, *supra*, the Court quoted with approval from Buchanan v Kennard, 234 Mo. 117:

"But a person who is sick, injured, or afflicted, or in a helpless condition, is nonetheless a proper object to be included in the purpose of a public charity, although he may not be poor." 118 Kan at 558.

It is therefore my opinion that the Wichita P.B.F. in providing its members with medical and health benefits is an organization with "charitable purposes" within the liberal meaning given that term by various Kansas cases, and is, accordingly, subject to the requirements of K.S.A. 17-1739, et seq.

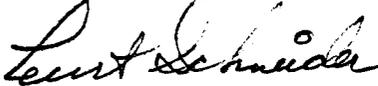
This conclusion of the applicability of the charitable solicitations statutes is further compelled by the fact that the statutory definition of "charitable purpose" appears broader in scope than the case law definitions. As pointed out above, included in K.S.A. 17-1739(F) are the terms "philanthropic, patriotic, or eleemosynary purpose", which are not found in the constitutional and statutory provisions which have generated the Court determinations of what is "charity". The inclusion of such additional terms by the legislature would imply an intent to embrace any purpose appealing to people's generous instincts to advance the common good in any form or manner. Westchester County Society For Prevention Of Cruelty To Animals v Mergel, 292 N.Y. 121, 54 N.E. 2d 329 (1944). The provision of health and medical care, although indirect, to a group of persons would certainly be an advancement of the common good, especially when such persons are law enforcement officers whose health is of public concern.

As to the advice in past letters to Fraternal Order of Police organizations that they were not within the provision of K.S.A. 17-1739, et seq., it should be noted that such opinions were informal and not entirely clear about their bases. However, this office is reviewing the operations and purposes of such organizations

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to determine whether they are also subject to the requirements of  
the Charitable Solicitations Act.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Curt Schneider".

CURT T. SCHNEIDER  
Attorney General

CTS:DAL:gg