



**THE ATTORNEY GENERAL  
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON  
ATTORNEY GENERAL**

August 30, 1962

Mr. Burney Walker  
Criminal District Attorney  
Waco, Texas

Opinion No. WW-1427

Re: Whether the Roosevelt  
Hotel is exempt from  
ad valorem taxes under  
the stated facts

Dear Mr. Walker:

This will acknowledge your request for an opinion under date of August 1, 1962. Your letter and a statement attached thereto as Exhibit A set forth the following facts.

"An application for exemption from ad valorem taxes has been made by the Allen McDonald Foundation, a Texas non-profit corporation, for the Roosevelt Hotel here in Waco. The foundation will operate the hotel as a home for the aged."

The Roosevelt Hotel is being conveyed to the Allen McDonald Foundation. Bishop L. J. Reichler is president of the foundation, and, as such, has requested the exemption of the property from ad valorem taxes under the provisions of Section 7 of Article 7150, Vernon's Civil Statutes, and Section 2 of Article 8 of the Texas Constitution on the ground that the property will be operated as a charitable institution.

In support of this request, the following information was submitted:

"a) The Home will be operated on a non-profit basis;

"b) No admission for an entry into the Home will be charged;

"c) Elderly people who are able to pay will be asked to pay the cost of lodging, food and other services furnished by the Home;

"d) No one will be denied admission because of inability to pay; in cases in which the applicant cannot pay the full

amount, he will be asked to pay in accordance with his means, the amount to be paid in such cases will be a matter of negotiation and mutual agreement; each case will be considered on its merits; in cases where the applicant is unable to make any payment, the Foundation will not hesitate to pay 100% of the cost of maintenance;

"e) It is anticipated that the average cost of maintenance will be \$170.00 per month;

"f) The experience of other Homes for older adults across the nation has shown that quite often emergency financial needs result in connection with the last illness and death of residents in such homes. Quite often expenses cannot be met by the resident in the Home. Therefore the Home must bear this expense. Such expense in this case will be borne by the Allen McDonald Foundation.

"g) The entire premises upon which exemption is requested will be devoted 100% to the operation of the Home;

"h) Revenues from operation of the Home may not be sufficient to pay all costs, including service of the proposed FHA loan. In my capacity as Catholic Bishop of the Diocese of Austin, I have agreed to underwrite payments on the loan. In effect, this means if revenues from operation of the Home are not sufficient, the deficit will be met from funds of the Catholic Church or contributions from its members.

"i) The Home will be non-sectarian. It will have both Protestants and Catholic chapels, and also facilities for Jewish worship, should the need arise. Obviously a substantial number of the occupants of the Home will be persons from Waco and McLennan County."

The Roosevelt Hotel is being repaired and improved at this time to meet the requirements of a home for the aged. Information from your letter and the Exhibit A attached thereto shows that the hotel, as of July 3, 1962, has not been conveyed to the Allen McDonald Foundation.

Your letter further states that:

"According to Exhibit A, the operation of the Roosevelt Hotel will meet all of the requirements set forth in Opinion No. WW-1277. The only additional point that might be covered is that whether or not the hotel is now exempt from ad valorem taxes. . . ."

Although you state that the Roosevelt Hotel is being repaired and improved at this time to meet the requirements of a home for the aged, you also state that Roosevelt Hotel has not been conveyed to the Allen McDonald Foundation.

We are not advised as to who was the owner and holder of title to this property on the first day of January, 1962. Since it was not owned by the Allen McDonald Foundation on that date, it could not be exempt from taxation for 1962 under the theory that it is intended to be later used as a charitable home for the aged.

In Hedgecroft v. City of Houston, 150 Tex. 654, 244 S.W.2d 632, Petitioner is a corporation organized for the operation of a hospital, clinic and training school and is an institution of purely public charity. It acquired title to the property on December 30, 1948 and was in the process of altering and improving from prior to the time title was acquired until May 13, 1949 when the Hedgecroft Clinic moved into the premises and started operation.

Quoting from the opinion, the court said at page 636:

"Petitioner's acts on and before January 1, 1949, as alleged in the petition, the substance of which has been set out at the beginning of this opinion, were part of the necessary preparation and remodeling of the building for operation as a hospital and clinic. The work proceeded until it was completed on May 13, 1949, and since that time the hospital and clinic have been operated as a public charity. The facts alleged show, in our opinion, an

actual and direct use of the property on and prior to January 1, 1949, for the charitable purpose."

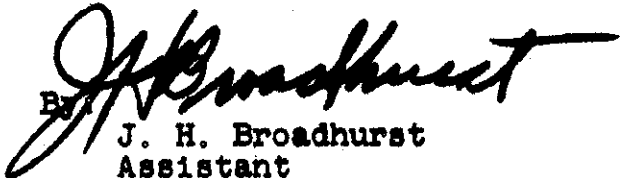
Under the facts stated, Allen McDonald Foundation qualifies as a charitable corporation, and although the property involved is taxable under the present ownership, it will become exempt as of January 1st next after it is conveyed to the corporation to be used for the purposes stated.

S U M M A R Y

Under stated facts, real estate is not exempt from ad valorem taxes at present time, but will become exempt January 1st after it is conveyed to charitable corporation.

Yours very truly,

WILL WILSON  
Attorney General of Texas

  
By: J. H. Broadhurst  
Assistant

JHB/jp

APPROVED:

OPINION COMMITTEE:  
Morgan Nesbitt, Chairman

L. P. Lollar  
Fred D. Ward  
Robert A. Rowland

REVIEWED FOR THE ATTORNEY GENERAL  
By: Leonard Passmore