



## The Attorney General of Texas

December 27, 1984

JIM MATTOX  
Attorney General

Supreme Court Building  
P. O. Box 12548  
Austin, TX. 78711-2548  
512/475-2501  
Telex 910/874-1367  
Telecopier 512/475-0266

Honorable Mike Driscoll  
Harris County Attorney  
1001 Preston, Suite 634  
Houston, Texas 77002

Opinion No. JM-269

Re: Whether the real and personal  
property of the Blue Bird Circle  
is exempt from ad valorem taxes

714 Jackson, Suite 700  
Dallas, TX. 75202-4506  
214/742-8944

4824 Alberta Ave., Suite 160  
El Paso, TX. 79905-2793  
915/533-3484

1001 Texas, Suite 700  
Houston, TX. 77002-3111  
713/223-5886

806 Broadway, Suite 312  
Lubbock, TX. 79401-3479  
806/747-5238

4309 N. Tenth, Suite B  
McAllen, TX. 78501-1685  
512/682-4547

200 Main Plaza, Suite 400  
San Antonio, TX. 78205-2797  
512/225-4191

An Equal Opportunity/  
Affirmative Action Employer

Dear Mr. Driscoll:

You have asked this office to determine whether section 11.18 of the state Property Tax Code exempts from ad valorem taxation the real and personal property of the Blue Bird Circle. Section 11.18 exempts charitable organizations from taxation of their buildings and tangible property, provided that the organization can meet certain stated requirements. We conclude that the Blue Bird Circle does not meet these statutory requirements for exemption under section 11.18. We limit our answer to the particular facts which you have given us.

You inform us that the Blue Bird Circle [hereinafter Circle] is a non-profit Texas corporation which owns a tract of land on which it maintains an office building and two resale shops. The Circle uses the office building for its various programs and meetings; the resale shops sell merchandise which has been donated to the Circle. The Circle uses all profits from its various activities to support the Blue Bird Clinic for Pediatric Neurology, which is located in the Texas Medical Center, several miles away from the property in question.

Section 11.18(c) of the Texas Tax Code lists the requirements which an organization must meet to qualify as a charitable organization under the statute:

(c) To qualify as a charitable organization for the purposes of this section, an organization (whether operated by an individual, as a corporation, or as an association) must:

(1) be organized exclusively to perform religious, charitable, scientific, literary, or educational purposes and, except as permitted by subsection (d) of this section, engage

exclusively in performing one or more of the following charitable functions:

(A) providing medical care without regard to the beneficiaries' ability to pay;

. . . .

As this office noted in Attorney General Opinion MW-288 (1980), the court in Hilltop Village, Inc. v. Kerrville Independent School District, 426 S.W.2d 943 (Tex. 1968), indicated that the activity of providing facilities which meet special residential requirements of the aged might qualify as an institution for tax exemption as one of purely public charity, but only where it also qualified under the statutory definition of such institutions for tax exemption purposes. Because the controlling statute (former article 7150, section 7, V.T.C.S.) at that time restricted exemptions to property of institutions dispensing aid "without regard to [the] poverty or riches of the recipient," a requirement which the claimant failed to meet, the exemption was denied. 426 S.W.2d at 948. See also City of Waco v. Texas Retired Teacher Residence Corporation, 464 S.W.2d 346 (Tex. 1971). Accordingly, if the property of the Circle is to be accorded a charitable exemption, the Circle itself must be exempt under section 11.18.

We must conclude that the Circle does not qualify for a section 11.18 tax exemption. We note that the burden of establishing the requirements for exemption from taxation is on the institution claiming the exemption, and the exemption must be proved in such a manner as to leave no doubt. Willacy County Appraisal District v. North Alamo Water Supply Corporation, No. 13-83-318-CV (Tex. App. - Corpus Christi, June 28, 1984). Further, in such cases, exemptions from taxation are never favored, and, in construing laws exempting an organization, all doubts must be resolved against the institution claiming the exemption. Hedgcroft v. City of Houston, 244 S.W.2d 632 (Tex. 1951). Both statutory and constitutional provisions purporting to grant exemption from taxation will be given a narrow and strict construction, and all doubts must be resolved against the granting of the tax exemption. Hilltop Village v. Kerrville Independent School District, supra.

Section 11.18(c)(3)(B) of the Tax Code requires that charter, bylaws, or regulations adopted by the organization to govern its affairs must

direct that on discontinuance of the organization by dissolution or otherwise the assets are to be transferred to this state or to an educational, religious, charitable, or other similar organization that is qualified as a charitable

organization under Section 501(c)(3), Internal Revenue Code of 1954, as amended.

Article 1, section 3 of the Circle's bylaws reads:

Section 3. No part of the property of this Corporation shall ever be utilized for the private gain or profit of any officer, director, or member, as such, of the Corporation.

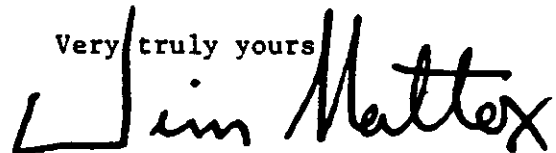
In its brief, the Circle refers to section 3 as ensuring that its assets are "perpetually dedicated to use in performing the organization's charitable function." The Circle asserts that this provision satisfies the statutory requirements of section 11.18(c)(3). We disagree. There is no provision in the documents submitted to us that directs the Circle's assets to be transferred in the required manner in the event of its discontinuance.

The tax status of the corporation for this year is determined by its qualifications on January 1, 1984. Prop. Tax Code §11.42. Because the Circle does not meet the section 11.18(c) statutory requirements of a charitable organization, we conclude that its property is not exempt from ad valorem taxation.

S U M M A R Y

The Blue Bird Circle does not meet the statutory requirements to qualify as a charitable organization and, therefore, is not exempted from ad valorem taxation by section 11.18 of the state Property Tax Code.

Very truly yours



J I M M A T T O X  
Attorney General of Texas

TOM GREEN  
First Assistant Attorney General

DAVID R. RICHARDS  
Executive Assistant Attorney General

RICK GILPIN  
Chairman, Opinion Committee

Prepared by Rick Gilpin  
Assistant Attorney General

APPROVED:  
OPINION COMMITTEE

Rick Gilpin, Chairman  
Colin Carl  
Susan Garrison  
Tony Guillory  
Jim Moellinger  
Jennifer Riggs