

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

LIBERTY COUNTY HOSPITAL)	
and NURSING HOME,)	
)	DOCKET NO.: SPT-2001-1
Appellant,)	
)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,)	<u>FOR JUDICIAL REVIEW</u>
)	
Respondent.)	

The above-entitled appeal was heard telephonically on November 13, 2001, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law.

The taxpayer, Liberty County Hospital and Nursing Home, represented by Richard F. Moog, CPA and chief financial officer, and Brad Robinson, CEO and administrator, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Appraisal Specialist Virgil Byford, presented testimony in opposition to the appeal. Testimony was presented. The duty of this Board is to determine whether the property qualifies for an exemption, based on a preponderance of the evidence. The Liberty County Hospital and Nursing Home is the appellant in this

proceeding and, therefore, has the burden of proof. Based on the evidence and testimony, the Board finds that the decision of the Department of Revenue is affirmed.

STATEMENT OF ISSUE

The issue before this Board is to determine if the subject property qualifies for tax-exempt status as a hospital and charitable organization.

FACTUAL BACKGROUND

1. Due, proper and sufficient notice was given of this matter and the hearing was conducted telephonically. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

The improvements located upon Lots 19 and 20, Block 5 of the Gagnon Addition to the City of Chester, County of Liberty, State of Montana. (Application number 4800201.)

3. On February 15, 2001, the taxpayer applied for an exemption for the subject property. (Application #4800201.)

4. On June 27, 2001, Mr. Byford wrote to the taxpayer asking for information concerning the use of the subject property.

5. On July 10, 2001, Mr. Moog contacted Mr. Byford by telephone and provided the information concerning the use of the property. At that time, Mr. Moog indicated that the use of the subject house on Lots 19 and 20 in Block 5 was to provide housing for an administrator or physician working at the Liberty County Hospital and Nursing Home. The occupant of the subject home is expected to pay rent in the amount of \$350 or \$400 a month, according to Mr. Moog.

6. Based on that information, Mr. Byford issued a letter, dated July 24, 2001 to the taxpayer denying the exemption, for the reason that *"The property is used as residential housing for the Administrator of the Hospital or for housing for visiting doctors. Therefore, it does not meet the use requirements of 15-6-201 (1) (c) , MCA."*

7. On August 20, 2001, the taxpayer appealed the Department of Revenue's decision to the State Tax Appeal Board. An accompanying letter, outlining the taxpayer's position, stated in pertinent part:

The property in question is used as permanent residential housing for either the Administrator/CEO or an employed physician of Liberty County Hospital and Nursing Home, Inc. (LCHNH).

We understand that while the ownership requirement has been met, that the use requirement for exemption is in question by the Department of Revenue (DOR). We further understand that it is due to the DOR's interpretation of the use requirements that exemption for this property was denied.

*The position of LCHNH is that property which is either **required or absolutely essential** to be able to*

achieve an exempt purpose (providing health services) should qualify for exemption.

Our position is based upon the following facts:

1. Survival of LCHNH would be impossible without a CEO or physicians.

2. In a town the size of Chester, recruitment of persons to fill either the CEO or physician positions would be virtually impossible unless we had housing available.

3. Ownership of this property must be considered a part of normal hospital activities, as without it, hospital activities would not be possible.

4. Other viable housing options are not available for this purpose.

The DOR has indicated that this same situation has been appealed to the STAB before (1991, St. Vincent Hospital) with the appeal being denied. After reviewing the documentation supplied by the DOR with regard to that appeal, we believe that differences exist between the St. Vincent property in Billings and the LCHNH property in Chester. We feel those differences include, but are not limited to, the fact that the property in Chester is for permanent residential housing, while the property in Billings was for temporary housing. Also, there is a significant difference between the general availability of either temporary or permanent residential housing in Chester (population 871) versus Billings (population 89,847).

Finally, it appears to us that the intent of the law should be considered here. We feel that the legislature, in both 15-6-201, MCA and 50-5-101, MCA, by lack of specific exclusion of property of this type have inferred some reasonable level of latitude on DOD's part to determine the actual intent, purpose and use of specific piece of property on a case by case basis. In this case it appears that the property in question, due to the nature and necessity of its use to achieve an exempt purpose, should be granted exemption according to 15-6-201, MCA.

8. This Board issued a letter acknowledging receipt and acceptance of the appeal on August 22, 2001.

9. Mr. Byford filed a response to the August 22, 2001 acceptance letter in a letter dated September 14, 2001, which outlined the DOR's position, in pertinent part:

The Liberty County Hospital and Nursing Home, Inc., applied for property tax exemption for Lots 19 and 20 in Block 5 of the Gagnon Addition to Chester on an application dated February 15, 2001. The property consists of a single-family residence on two city lots and is used by the administrator or an employed physician of the hospital as their residence. The Liberty County Hospital and Nursing Home applied for the property tax exemption as a hospital and charitable organization.

In order for hospital property to qualify for an exemption it must meet the requirements of 15-6-201, (1) (C), MCA, which states: "property used exclusively . . . for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3." This means that the property must be directly used for providing healthcare, such as medical treatment, nursing rehabilitative, or preventive care to any individual. A house used for residential purposes does not meet this requirement.

In order for property to qualify for an exemption under the charitable exemption statute, it must meet the requirements of 15-6-201, (1) (e), MCA, which states: "subject to subsection (2), property that is owned or property that is leased from a federal, state or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes." In our opinion, property that is used as a residence for an employee of the hospital is not "directly used for purely public charitable purposes."

Therefore, since the property under appeal, in our opinion, does not meet the use requirements of the property tax exemption statutes, we issued a letter denying exemption to the property on July 24, 2001. Based on the above listed information, the Department of Revenue respectfully requests that the State Tax Appeal Board uphold our denial of this exemption request . . .

TAXPAYER'S CONTENTIONS

The taxpayer argued that the usage requirement of 15-6-201 (1) (c), MCA, is met by the fact that, without the use of the subject property, it would not be able to achieve its exempt purpose. It would not be able to recruit a CEO or a

physician if it were not able to offer the subject residence as enticement and, without that necessary staff, it would be unable to provide health care to the Chester area.

A rural area, such as Chester, cannot be reasonably compared to a larger metropolitan area, such as Billings (in the *Sisters of Charity of Leavenworth Health Services, Inc.*, PT-1990-8, appeal cited by the DOR) in terms of providing amenities which would attract qualified personnel.

The subject residence, located approximately two blocks from the hospital, is a doublewide mobile home on a full basement with a two-car garage, on two lots, in the "nicer part of town." It was donated to the taxpayer in July of 2000 by Liberty Health Planning, Inc. Prior to the donation to the taxpayer, the house was also made available for lease to hospital staff by Liberty Health Planning, Inc., a non-profit organization. The residence is currently rented to a physician recruited this past summer for "around \$350 or \$400 a month." Mr. Moog testified that the annual property taxes associated with the property are approximately \$1,100.

In response to questioning by the Board, Mr. Moog stated that the employment contract with physicians and/or CEO's does not contain any provision for a housing allowance. The occupants are expected to pay rent. Mr. Moog also stated that the occupants of the subject house are not required to

be available on a 24-hour basis each day. ". . . It wouldn't be for any reason other than to have a residence available for them to get in, get their family settled, get to work, and go, not for an availability requirement. They would still have to meet the availability requirement of a physician on call, while they were on call, if it was a physician living there, but it wouldn't it wouldn't be for a 24/7 type situation."

In response to a question from the Board, Mr. Moog testified that no formal literature exists describing the availability of the subject house to prospective employees.

DOR'S CONTENTIONS

The DOR's position is that this property must qualify for exemption under 15-6-201 (1) (c), MCA. The applicable portion of the statute is "property used exclusively for non-profit health care facilities as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3."

The DOR contends that this statute requires that the property meet a use test in order to qualify for a property tax exemption. This means that the property must be used as a health care facility in which health care is directly provided to patients in order to qualify.

This property is used as residential housing for workers at the hospital and, therefore, does not meet the use requirement.

Mr. Byford cited cases deemed applicable to the present case: *Cruse v. Fischel*, 55 Mont. 258, which held that tax exemption statutes are to be construed strictly for taxation and against exemption, and several prior decisions of this Board, including *Sisters of Charity of Leavenworth Health Services, Inc.*, PT-1990-8; *The Down Home Project, Inc., v. Department of Revenue*, SPT-1991-4; and *Roman Catholic Bishop of Great Falls - Billings*, SPT-1985-39 and SPT-1985-40.

The *Sisters of Charity* case involved two houses owned by St. Vincent's Hospital in Billings. These houses were in close proximity to the hospital and were used for housing for visiting doctors, consultants, nurses and other technicians. The DOR denied the request for exemption in this case because it believed the use of that property did not meet the use requirements of 15-6-201 (1) (c), MCA. This Board upheld the DOR denial.

The *Down Home Project* appeal involved two houses in Missoula County which were used for a horticultural, self-reliance and education demonstration project. The taxpayer sought exemption as a horticultural society, educational and purely public charity. The exemption for both horticultural

societies and educational use are provided for in 15-6-201 (1) (c), MCA. The employees residing in the homes received a reduced rent and the houses were used as a demonstration project on self-reliant living. The DOR argued that this was not a qualifying use as required by statute because the houses were used for residential purposes. This Board upheld the DOR denial.

The *Roman Catholic Bishop of Great Falls- Billings* appeal involved the St. Labre Indian Mission in Rosebud County. The taxpayer made an argument that 30 residences, occupied by teachers and other staff working at the school, should be exempt from property taxes because the residences were being used for educational purposes, under 15-6-201 (1) (c), MCA. The taxpayer in this case also made the argument that, absent these houses, the mission would have difficulty in attracting competent and qualified personnel for its staff. The DOR denied the exemption request because it didn't believe the use of the houses met the educational use requirements of 15-6-201 (1) (c), MCA. This Board upheld the DOR denial.

In conclusion, the DOR's position is that this property does not meet the use requirements set forth in the exemption statute, 15-6-201 (1) (c), MCA, in that the property must be used as a health care facility in which

health care is directly provided to patients in order to qualify.

This property is used as residential housing for workers at the hospital and, therefore, does not meet the use requirement.

BOARD DISCUSSION

The Board finds that the DOR acted properly in denying the request for exemption. This property is used as residential housing for workers at the hospital and, therefore, does not meet the use requirement of Section 15-6-201 (1) (c), MCA. The record indicates that the property is not offered to hospital employees as part of any compensation package, nor is the occupant of the house required to be available 24 hours a day, seven days a week as a condition of employment.

This Board found, in Roman Catholic Bishop of Great Falls - Billings, SPT-1985-39 and SPT-1985-40, that "The thirty residential units and one garage rented to teachers and other staff are not incidental to or necessary for the operation of the Mission, nor are they used for educational purposes. Therefore, the Board concludes that they do not qualify for property tax exemption." In The Down Home Project, Inc., v. Department of Revenue, SPT-1991-4, the

Board found that the primary usage of the "demonstration homes" was residential and, therefore, the property was not entitled to property tax exemption under 15-6-201 (1) (c), MCA.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. **§15-2-301, MCA.**

2. **§15-6-201, MCA. Exempt categories.** (1) The following categories of property are exempt from taxation: ". . . (c) property used exclusively for . . . nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. . ."

3. The appeal of the taxpayer is hereby denied and the decision of the Department of Revenue is affirmed.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall remain on the tax rolls of Liberty County by the local Department of Revenue office at the value determined by the DOR. The appeal of the taxpayer is denied, and the decision of the DOR denying exemption on the subject property for tax year 2001 is affirmed.

Dated this 15th day of November, 2001.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JERE ANN NELSON, Member

MICHAEL J. MULRONEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 15th day of November, 2001, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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