

TAXATION: TAX EXEMPT PROPERTY.

CONSTITUTION OF VIRGINIA: TAXATION AND FINANCE (EXEMPT PROPERTY).

HEALTH: REGULATION OF MEDICAL CARE FACILITIES AND SERVICES.

Medical center must fall within statutory definition of licensed "hospital" to receive benefit of personal and real property tax exemption. Off-site facility, owned and operated by tax-exempt hospital, in which physician performs diagnostic procedures on patients and refers them to hospital for treatment is not hospital classified as tax exempt. Local commissioner of revenue determines tax-exempt status based on facts.

The Honorable Stanley R. Lewis

Commissioner of the Revenue for Middlesex County

October 6, 1998

You ask whether a medical center owned by a hospital corporation is exempt from personal and real property taxation.

You relate that the hospital corporation is a nonstock, nonprofit corporation that owns and operates a hospital located in Lancaster County. The hospital enjoys tax-exempt status pursuant to Article X, § 6 of the Constitution of Virginia (1971) and § 58.1-3606(A)(5) of the *Code of Virginia*. The corporation owns a medical center located in Middlesex County, twenty miles from the hospital. You note that one physician is employed at the medical center. The physician does not admit patients; he treats and refers patients to the hospital.¹ You inquire whether the medical center qualifies for an exemption from real and personal property taxation in Middlesex County.

Article X, § 6(a)(6) provides that "[p]roperty used by its owner for ... charitable [or] benevolent ... purposes, as may be provided by classification or designation" "shall be exempt from taxation." Article X, § 6(f) provides that "[e]xemptions of property from taxation ... shall be strictly construed."

Pursuant to the constitutional authority to exempt property by classification, the General Assembly has enacted several statutes pertinent to your inquiry. Specific to your inquiry, § 58.1-3606(A)(5) classifies and exempts from taxation "[p]roperty belonging to and actually and exclusively occupied and used by ... hospitals ... conducted not for profit but exclusively as charities." Property qualifying under this classification is exempt from taxation "regardless of when the organization seeking the exemption was created or the property acquired."² Because the property in issue came into existence after 1977,³ rules of strict construction apply when determining whether such property is eligible for this exemption.⁴

I can find no express constitutional or statutory tax exemption for a "medical center." Thus, for a medical center to receive the benefit of the § 58.1-3606(A)(5) exemption, it must fall within the meaning of a "hospital." In so determining, the statutory definition of a hospital is relevant.⁵

Article 1, Chapter 5 of Title 32.1, §§ 32.1-123 through 32.1-137, governs the regulation of hospital licensure and inspection. Section 32.1-123 defines a "hospital" subject to such regulation as

any facility ... in which the primary function is the provision of diagnosis, of treatment, and of medical and nursing services, surgical or nonsurgical, for two or more nonrelated individuals, including hospitals known by varying nomenclature or designation such as sanatoriums, sanitariums and general, acute, rehabilitation, chronic disease, short-term, long-term, outpatient surgical, and inpatient or outpatient maternity hospitals.

Section 32.1-124 specifically excludes from such regulation "an office of one or more physicians or surgeons unless such office is used principally for performing surgery."⁶ Reading these statutes *in pari materia*,⁷ it is clear that a hospital and a physician's office are treated as two distinct classes.⁸ Under strict rules of construction, a facility that is a physician's office is not tax exempt unless it is used "principally for performing surgery."⁹

Based on the limited facts presented in your inquiry, it is my opinion that an off-site facility owned and operated by a tax-exempt hospital in which one physician diagnoses patients but refers them to a hospital for treatment is not a hospital within the purview of § 58.1-3606(A)(5). A final determination of exemption from taxation, however, is a factual question that must be made by the commissioner of revenue.¹⁰

¹I interpret these statements to mean that the physician diagnoses the patient and may prescribe medication, but refers the patient to the hospital for further treatment.

²*Children, Inc. v. City of Richmond*, 251 Va. 62, 66, 466 S.E.2d 99, 102 (1996).

³I base this statement on the information you provide that the hospital was built in 1977. I assume for purposes of this inquiry that the hospital corporation was formed in 1977 and any property owned by it was acquired after that date.

⁴See *Children, Inc. v. City of Richmond*, 251 Va. at 68, 466 S.E.2d at 103.

⁵See 1986-1987 Op. Va. Att'y Gen. 332, 334 (concluding that nursing home is not exempt under § 58.1-3606(A)(5), and, further, that "terms 'hospital' and 'nursing home' clearly refer to two distinct classes, as illustrated by [statutory] licensing and inspection definitions").

⁶Section 32.1-124(v).

⁷See 1996 Op. Va. Att'y Gen. 134, 135 (statutes relating to same subject should be considered *in pari materia*).

⁸See 1986-1987 Op. Va. Att'y Gen., *supra* note 5, at 334.

⁹Section 32.1-124(v).

¹⁰See Op. Va. Att'y Gen.: 1994 at 99, 104; 1989 at 338, 338-39.