



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable Philip J. Kellam
Commissioner of the Revenue
City Hall
Virginia Beach, Virginia 23456-9002

Dear Commissioner Kellam,

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether Planned Parenthood of Southeastern Virginia, Inc. ("PPSV") is exempt from local real and personal property taxes by classification as a hospital conducted not for profit.

Response

It is my opinion that PPSV is exempt from local real and personal property taxes as a consequence of licensure as a category of hospital if the commissioner of the revenue determines that PPSV is operated not for profit, but to promote the charitable purposes of the organization, and that the property belongs to and is actually and exclusively occupied and used by PPSV.

Background

You state that PPSV has state licensure as an "outpatient surgical hospital." Documentation provided with your opinion request evidences that PPSV also is licensed as an abortion facility. You provide further documentation that indicates that income is derived from use of the property, and that part of the property is occupied or used by one or more other entities, although no further details on such occupancy and use are provided.¹

¹ PPSV's tax exemption application materials, as filed with your office, respond affirmatively to the questions, "Does any other individual, association or corporation occupy or use any part of the premises of any property for which exemption is sought? If so, give all details." and "Is any income derived from the use of any portion of the real property by other individuals or groups, whether considered as rent or reimbursement of necessary expenses for services incurred?" The identity of the other entity, or entities, is not provided, or the nature of its, or their, use or uses. A later question within the application inquires, "For what purpose is the real property currently being used? If there are several types of use for a single parcel, indicate such usages by areas of the buildings and floor locations." PPSV responds to that inquiry by stating, "The facility replaces our old Norfolk and Virginia (sic) leased facilities with an expanded clinical first floor of about 10,459 sq. ft. The second floor is about 2,941 sq. ft. dedicated

Applicable Law and Discussion

Article X, § 6(a)(6) of the Constitution of Virginia authorizes the General Assembly to provide tax exemptions for “[p]roperty used by its owner for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes.”² Pursuant to this constitutional authority, the General Assembly has enacted several statutes granting tax exempt status to certain property. Such exemptions must be “strictly construed” as exceptions from general taxation.³

Specific to your inquiry, § 58.1-3606(A)(5) exempts from taxation

[p]roperty belonging to and actually and exclusively occupied and used by ... hospitals ... conducted not for profit but exclusively as charities (which shall include hospitals operated by nonstock corporations not organized or conducted for profit but which may charge persons able to pay in whole or in part for their care and treatment).^[4]

Thus, based on the plain language of the statute, in order to qualify for an exemption PPSV must demonstrate that it meets three conditions: 1) that it is a “hospital,” 2) that the property in question belongs to and is “actually and exclusively occupied and used by” PPSV, and 3) that PPSV operates on a not for profit basis and exclusively as a charity.

Section 32.1-123 defines a “hospital” as

any facility licensed pursuant to this article 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 children’s hospitals, sanatoriums, sanitariums and general, acute, rehabilitation, chronic disease, short-term, long-term, outpatient surgical, and inpatient or outpatient maternity hospitals.^[5]

In addition, abortion facilities are classified as a category of hospital.⁶ PPSV holds dual licensure as an outpatient surgical hospital and an abortion facility, two categories of hospitals. Therefore, by virtue of such licensure, PPSV meets one of the qualifications for exemption set forth in § 58.1-3606(A)(5).

Satisfying the hospital requirement, however, does not end the inquiry whether PPSV is to be exempt from local real and personal property taxes. PPSV further bears the factual burden of showing that the property in question belongs to it, and that such property is “actually and exclusively occupied and used by” PPSV.⁷ Thus, PPSV’s ownership of the property, and the occupation by, and nature of the uses upon the property by another entity or entities must be factually determined by your office and evaluated in light of the exclusivity requirements of § 58.1-3606(A)(5).

to administrative and educational use.” It is not clear whether these described second floor uses are related to PPSV’s operations, or to the operations of a separate entity occupying that part of the property.

² VA. CONST. art. X, § 6(a)(6).

³ VA. CONST. art. X, § 6(f); *Smyth Cnty. Cmty. Hosp. v. Town of Marion*, 259 Va. 328, 333, 527 S.E.2d 401, 403 (2000).

⁴ VA. CODE ANN. § 58.1-3606(A)(5) (2009).

⁵ VA. CODE ANN. § 32.1-123 (2011).

⁶ See § 32.1-127(B)(1) (Supp. 2013); 12 VA. ADMIN. CODE § 5-412-30.

⁷ See *Smyth Cnty. Cmty. Hosp.*, 259 Va. at 333, 527 S.E.2d at 403 (quoting *Mem’l Hosp. Ass’n v. County of Wise*, 203 Va. 303, 307, 124 S.E.2d 216, 219 (1962)). See also 2002 Op. Va. Att’y Gen. 331, 335.

In addition, § 58.1-3606(A)(5) requires PPSV to demonstrate that its occupation and use is conducted “not for profit” but exclusively as a charity. To establish that its operations are not for profit and charitable, PPSV must satisfy the “dominant purpose test.” This test determines whether or not the property in question promotes the purpose of the group seeking an exemption.⁸ The property is entitled to the tax exemption regardless of any revenue created on the land, so long as “the dominant purpose of the revenue generating property is not to obtain revenue or profit, but ‘to promote the purposes for which the [charity] was established and is incidental thereto.’”⁹

Whether the foregoing requirements for tax exemption are met requires factual determination by the commissioner of the revenue or other appropriate tax official.¹⁰ Virginia law requires that “[i]f there is any doubt concerning the exemption, [such] doubt must be resolved against the party claiming the exemption.”¹¹ The commissioner of the revenue therefore must determine whether PPSV qualifies for a tax exemption under § 58.1-3606(A)(5) by examining, and making determinations upon, all of the attendant facts.¹²

Conclusion

Accordingly, it is my opinion that PPSV is exempt from local real and personal property taxes as a consequence of licensure as a category of hospital if the commissioner of the revenue determines that PPSV is operated not for profit, but to promote the charitable purposes of the organization, and that the property belongs to and is actually and exclusively occupied and used by PPSV.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General

⁸*Smyth Cnty. Cmty. Hosp.*, 259 Va. at 334, 527 S.E.2d at 404.

⁹ *See id.* (quoting *County of Wise*, 203 Va. at 309, 124 S.E.2d at 220). *See also* *Bd. of Supvrs. v. Med. Grp. Found., Inc.*, 204 Va. 807, 814, 134 S.E.2d 258, 263 (1964).

¹⁰ *See* 2002 Op. Va. Att’y Gen. 338, 340; 1989 Op. Va. Att’y Gen. 338, 339. The Attorney General “refrain[s] from commenting on matters that would require additional facts[.]” 2010 Op. Va. Att’y Gen. 56, 58.

¹¹ 2002 Op. Va. Att’y Gen. 331, 335 (citing *Westminster-Canterbury v. City of Virginia Beach*, 238 Va. 493, 501, 385 S.E.2d 561, 565 (1989)).

¹² *See* 2002 Op. Va. Att’y Gen. 338, 340; 1989 Op. Va. Att’y Gen. 338, 339.