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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

January 30, 1998

Ladson F. Howell, Esquire
Beaufort County Attorney
Post Office Box 40
Beaufort, South Carolina 29901

Re: Informal Opinion

Dear Mr. Howell:

You seek an opinion "regarding the tax exempt status of the various chambers of commerce throughout the state; specifically whether they are exempt from ad valorem taxation." You provide the following information by way of background:

> [i]t appears that often the chambers of commerce rent facilities and engage in public commerce which do not appear to be eleemosynary in nature and therefore would not qualify for exemption under our South Carolina state tax laws.
>
> Please be advised that the Department of Revenue heretofore has taken a position that these type organizations qualify for exemption under Section 12-37-220(b)(16)(a) of the South Carolina Code of Laws for 1976, as amended.
>
> On behalf of Beaufort County Council, I would appreciate your Office issuing an Attorney General's opinion as to whether or not the chambers of commerce are exempt from ad valorem taxation and whether or not exemption covers other properties owned by the chamber. A clear construction of Section 12-37-220(B)(16)(a) would seem to indicate that only the main office as a meeting place would be exempt and other

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properties owned by a chamber of commerce would be subject to taxation.

Law / Analysis

S.C. Code Ann. Sec. 12-37-220 sets forth an enumeration of exemptions from ad valorem taxation. Section 12-37-220(B)(16)(a) exempts

> [t]he property of any religious, charitable, eleemosynary, educational, or literary society, corporation or other association, when the property is used by it primarily for the holding of its meetings and the conduct of the business of the society, corporation, or association and no profit or benefit therefrom inures to the benefit of any private stockholder or individual.

To my knowledge, no South Carolina decision or opinion of this Office has, as yet, interpreted § 12-37-220(A)(16)(a). However, certain guidance is provided by other analogous authorities. For example, the case of Hibernian Society v. Thomas, et al., 282 S.C. 465, 319 S.E.2d 339 (Ct. App. 1984) is instructive. There, the Court of Appeals was faced with interpretation of § 12-37-220(B)(12). Such provision reads as follows:

> (12) [t]he property of any fraternal society, corporation or association when the property is used primarily for the holding of its meetings and the conduct of its business and no profit or benefit therefrom shall inure to the benefit of any private stockholders or individuals. (emphasis added).

As can be seen the highlighted portion of the statute is virtually identical to that contained in § 12-37-220(B)(16)(a). The question before the Court was whether, pursuant to the foregoing enactment, the Hall belonging to the Hibernian Society was exempt from ad valorem taxation.

The Court noted that "[a]s a general rule, tax exemption statutes are strictly construed against the taxpayer." Further, the Court responded to the argument that the Society was not entitled to a tax exemption because the property was not "used primarily for the holding of [the Society's] meetings and the conduct of [the Society's] business and no profit or benefit therefrom shall inure to the benefit therefrom shall inure to the benefit of any private stockholders or individuals." In addressing this contention, the Court found the exemption to be applicable, analyzing the statute as applied to the facts as follows:

> [t]he next condition to be satisfied is that the Hall be used primarily for the holding of the Society's meetings and the conduct of its business. The word "primarily" means "of first importance" or "principally". [citations omitted] .... As stated, the Hall is used to hold the Society's meetings and to conduct the business of being a fraternal organization. However, the Hall is also rented out to nonmembers and to members (who must also pay for this privilege) for their own personal, social use. This rental activity, though, is clearly secondary to the Hall's principal use as a meeting place for the conduct of the Society's business. The Hall is used 364 days a year for the fraternal and social purposes of the Society. In contrast, rentals of the Hall for nonmember functions are intermittent. Although the Society derives a significant income from these rentals, the money received from rentals is far less than the amount paid by the membership as dues.
>
> The last requirement is that no profit or benefit from the Society's business can inure to the benefit of any individual member. Obviously, no member receives any direct financial benefit from belonging to the Society such as a salary or dividends. We recognize that the "profit or benefit" may inure to an individual other than through the distribution of dividends. The City and County are arguing that having a place to socialize to the exclusion of the general public is sufficient "profit or benefit" to deny the exemption. We disagree.
>
> There is bound to be some incidental, non-financial benefit resulting from membership in any type organization. In enacting this particular condition, the legislature intended, we believe, to stop the flow of any direct or indirect commercial benefits to the individual member of the Society, see Harding Hospital v. U.S., 505 F.2d 1068 (6th Cir. 1974), as opposed to the benefits which inherently and customarily flow to the members of a fraternal organization as a group. Thus, the benefits resulting from membership in the fraternal organization which inure to the Society as a group, such as being able to purchase drinks in the lounge at cost and being

> able to rent the Hall at a lesser amount than non-members do not violate this requirement. Since the Society is not a business league and since the Society's members receive no free or reduced insurance benefits, no merchant's discounts or no other form of indirect commercial benefits, the no-profit condition has been met.

319 S.E.2d at 342. Thus, the foregoing language offers considerable guidance as to how our courts would interpret the virtually identical language contained in § 12-37-220(B)(16)(a). The Court in Hibernian emphasized that so long as the property is being used "primarily" as a meeting place, etc., the fact that there were unrelated secondary uses of the property was not controlling.

Of course, the issue of whether the exemption provided in § 12-37-220(B)(16)(a) is applicable in a given situation or to a particular piece of property is primarily a factual determination beyond the scope of an opinion of this Office. Op. Atty. Gen., December 12, 1983. Moreover, such determinations rest with the Department of Revenue, the agency primarily charged with enforcement of the State's tax laws. The construction of a statute by the agency charged with its administration is entitled to most respectful consideration and will not be overruled by the courts without cogent reasons. Logan and Associates v. Leatherman, 290 S.C. 400, 351 S.E.2d 146 (1986); Emerson Elec. Co. v. Wason, Inc., 287 S.C. 394, 339 S.E.2d 118 (1986). The Supreme Court has ruled that it may not substitute its judgment for that of the agency's where the agency's decision is factually supported. Byerly Hosp. v. S.C. State Health and Human Services Finance Commission, 319 S.C. 225, 460 S.E.2d 383 (1995). Neither may this Office supersede the determinations made by the Department of Revenue.

In this instance, I must presume that the Department of Revenue's application of § 12-37-220(B)(16)(a) is factually supported and is in accord with the Court of Appeal's interpretation in the Hibernian Society case. Clearly, the Court recognized in Hibernian that the plain intent of similar language is that the property in question must be used "primarily for the holding of the [eleemosynary corporation's] meetings and the conduct of [its] business ... ." The application of the exemption to a particular piece of property would undoubtedly depend upon the facts as to how that property is "primarily" used.[1] Other than that, the best I am in a position to provide is to enclose for your review a copy

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[1] Incidentally, the Department of Revenue advises me that a random search of properties owned typically shows that the local Chambers of Commerce are listed as owning only one tract of property.

of this decision. Undoubtedly, that is the only governing law in South Carolina with respect to an interpretation of § 12-37-220(B)(16)(a).

I hope this information proves helpful to you.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

RDC/an
Enclosure