

1980 WL 121020 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 11, 1980

**\*1 Subject: Property Tax—Exemption—Property of Charitable Foundation That Is Leased to Lander College**  
Real property owned by a foundation and leased to others is not exempt from ad valorem taxation.

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QUESTION:

The Lander Foundation leases real property to Lander College. Is such property exempt from property taxation?

APPLICABLE LAW:

[Article X, Section 3\(d\) of the South Carolina Constitution](#); [§ 12-37-220\(A\)\(4\), 1976 Code](#) of Laws.

DISCUSSION:

By Act 110, Acts of 1951, the General Assembly created the Greenwood County Educational Commission and declared its official title to be 'Lander Foundation'. That foundation held title to the property now owned by Lander College, the same having been transferred by the foundation to the college pursuant to § 59-101-30. The opinion does not consider this property.

On March 17, 1948, a corporate charter was issued to 'The Lander Foundation' which charter remains outstanding and as understood the corporation is active. As understood, this foundation owns the property that is leased to the college. Whether the same is exempt is governed by [Article X, Section 3\(d\)](#) which provides:

'There shall be exempt from ad valorem taxation: (d) all property of all charitable trusts and foundations used exclusively for charitable and public purposes.'

The exemption is limited, however, by the language of the section that provides:

'The exemption provided in subitems (c) and (d) for real property shall not extend beyond the building and premises actually occupied by the owners of such real property.'

Obviously, when the property is leased and possession given to another, the property is not occupied by the foundation.

'Statutory requirements that property of a charitable organization, in order to be exempt, be occupied by it have been construed as requiring actual possession, as distinguished from ownership possession or trivial use.' 84 C.J.S., [Taxation](#), § 282, p. 550.

[Section 12-37-220\(A\)\(4\)](#) contains language similar to the constitutional provisions above quoted.

It is argued, however, that § 12-37-220(B)(18) exempts the property. That section provides an exemption of: 'Real property leased on a nonprofit basis, to a state agency, county, municipality or other political subdivision so long as it is used for a general public purpose; provided, however, this exemption shall not apply to property used for office space or warehousing.'

A similar provision is not contained in the Constitution.

The application of this provision to the property exempt by Article X, Section 3(d) would negate the limitation provided for by the Constitution. Such cannot be done. [Strong v. Sumter](#), 185 S.C. 203, 193 S.E. 649, [Wofford College Trustees v. Spartanburg](#), 201 S.C. 315, 23 S.E. 2d 9.

CONCLUSION:

Real property owned by a foundation and leased to others is not exempt from ad valorem taxation.

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