

1975 WL 29019 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 18, 1975

\*1 The Richland Kiwanis Club is required to collect the admissions tax imposed in Section 65-802 of the Code of Laws in that it is not an eleemosynary and nonprofit corporation organized exclusively for religious, charitable, scientific or educational purposes.

Mr. J. W. Lawson  
Director  
License Tax Division

QUESTION:

Is the Richland Kiwanis Club exempt by subsection (4) of Section 65-802 from the admissions tax imposed in the section?

STATUTE INVOLVED

Section 65-802 of the South Carolina Code of Laws in part provides:

'There shall be levied, assessed, collected and paid upon all paid admissions to all places of amusement within this State of license tax \* \* \* provided, further, that no tax shall be charged or collected:

(4) On admissions charged by any eleemosynary and nonprofit corporation or organization organized exclusively for religious, charitable, scientific or educational purposes; \* \* \* provided, further, that no admission tax shall be charged or collected by reason of any charge made to any member of a nonprofit organization or corporation for the use of the facilities of the said organization or corporation of which he is a member;'

DISCUSSION

A corporation or organization that is exempt by the provisions of subsection (4) must be an eleemosynary and nonprofit corporation that is organized exclusively for religious, charitable, scientific or educational purposes. In resolving the question it is a general rule that tax exemption statutes are to be construed strictly against any claimed exemption. Chronicle Publishers, Inc. v. South Carolina Tax Commission, 244 S. C. 142, 135 S. E. 2d 261. In an opinion dated August 15, 1968, concerning the question whether or not a certain Junior Chamber of Commerce was exempt by the provisions of this statute, this office quoted from 18 Am.Jur.2d, Corporations, Section 6, the following:

'The broad rule has been stated that the character of a corporation is determined by the objects of its formation and the nature of its business as stated in its articles of incorporation or charter, and not by any limited but permissible activity in which, under its charter, it may choose to engage temporarily. \* \* \*

'Although some cases indicate that the provisions of the corporate charter or articles of incorporation are conclusive as to the character or nature of the corporation, other cases declare that such provisions are not conclusive and that the true character of the corporation may be shown by other evidence. Still other cases support the hybrid proposition that the charter or articles of incorporation are conclusive as against the corporation in respect of its character or kind,

but not conclusive in such respects as against the state or a third person. This latter rule seems to be based on sound principle and policy, \* \* \*.'

Further, in this opinion it was stated that the actual character of a corporation is not to be determined solely from the charter of the corporation but from other evidence related to the corporation's activities. This statement was later affirmed in the case of [Columbia Country Club v. Livingston](#), 252 S. C. 490, 167 S. E. 2d 300, wherein the court stated that it was necessary to refer to the actual activities and purpose of the corporation to arrive at a determination in regard to its exempt status.

\*2 Reference is made to the Charter and Bylaws of the corporation and particularly to the Treasurer's Report of the Kiwanis Club for the period April 29, 1975 through May 27, 1975. Attention is called specifically to the section of the report relating to the Club's expenses. It is doubtful, as appears from the information furnished, that the Club's activities are exclusively religious, charitable, scientific or educational and within the restrictions placed on the exemption. Therefore, relying on the rule that exemption statutes are to be construed strictly against the claimed exemption, we conclude that the Kiwanis Club is not entitled to the exemption contained in subsection (4) of Section 802. It would therefore be required to collect the tax on admissions charged to its non-members.

#### CONCLUSION

The Richland Kiwanis Club is not an eleemosynary and nonprofit corporation organized exclusively for religious, charitable, scientific or educational purposes and is therefore required to collect the admissions tax imposed in Section 65-802 of the Code of Laws.

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