1974 S.C. Op. Atty. Gen. 105 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3741, 1974 WL 21258

Office of the Attorney General

State of South Carolina
Opinion No. 3741
March 26, 1974

***1 Re: Columbia Music Festival Association**

The Columbia Music Festival Association is not exempt from the admissions tax imposed by Section 65–802 of the Code in that it is not exclusively organized for religious, charitable, scientific or educational purposes.

Honorable Robert C. Wasson
Chairman
South Carolina Tax Commission
Post Office Box 125
Columbia, South Carolina 29214

Dear Mr. Wasson:

This letter is written at the request of the South Carolina Tax Commission for the opinion of this office whether or not the Columbia Music Festival is exempt from the collection of admissions taxes which are imposed by Section 65–802 of the South Carolina Code of Laws, as amended.

The Columbia Music Festival Association was chartered in 1938 as an eleemosynary corporation with a stated purpose 'to do all those things necessary to improve the culture of the people of the State, especially in music.' Its by laws state it to be 'a group of Columbia citizens interested in the promotion of good music through the presentation of professional concerts and the support of chosen music activities.' The Association's funds are primarily derived from charges for admission to sponsored concerts and artists and from contributions. Historically, the funds have been used to discharge the obligations of the Association. None have inured directly to any member of the Association except as compensation for services rendered.

The admissions tax is imposed by the provisions of Section 65–802 of the South Carolina Code of Laws, as amended in 1965, 1968, 1969 and 1972. Additionally, this section provides certain exemptions and the pertinent parts of the law are here stated:

'There shall be levied, assessed, collected and paid upon all paid admissions to all places of amusement within this State a license tax * * *, provided 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;' (Emphasis added)

Prior to 1968, when the statute was amended to exempt only such corporations and organizations which are organized for one of the four (4) enumerated purposes, all eleemosynary or nonprofit corporations or organizations were exempted from this tax. Acting upon the claim of a country club for exemption as a nonprofit corporation under this statute, the Court held the club's corporate structure, purpose and operational history to be the determining criterion. Columbia Country Club v. Livingstone, 252 S. C. 490, 167 S. E. 2d 300. Such criteria are the basis for our conclusion that the Association is nonprofit and eleemosynary within the meaning of the amended statute quoted above.

***2** It is our conclusion, however, that the Association is not exempt from the tax in that it is not exclusively organized for one or more of the four (4) enumerated purposes.

In the case of Textile Hall Corporation v. Hill, 215 S. C. 262, 54 S. E. 2d 809, the Court had before it the question whether or not a statute exempting he property of Textile Hall Corporation from property tax was constitutional. The controlling constitutional provision was Article 10, Section 1, which provided for for a uniform and equal rate of assessment and taxation and which excepted such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes. The Court held that the Act could not be constitutionally sustained, making the following statements:
'The holding of expositions to advance the interests of an industry, however beneficial in the public interests the industry may be, can hardly be said to be an educational, literary or scientific activity in the usual acceptation of those terms. While there may be educational and scientific benefits in the holding of such expositions, and in the pursuit of incidents activities which assist in meeting operational expenses and are conducted for that purpose alone, it would be supplementing the language of the Constitution to hold that benefits of such character enable the Corporation to be classified as having educational or scientific purposes.

A theatrical enterprise operated under rules and regulations which imitated the staging or picturization of events and stories with an educational or scientific flavor, or otherwise purporting to advance the public interests in one or more fields, would hardly be said to have an educational or scientific purpose in the sense now under discussion. The fact that such an enterprise is operated in such manner as to yield no pro it except to pay salaries to the officers in charge and to pay the cost of the theatre, would hardly be deemed to bring it within the terms of the constitutional exemption, and we think that on the same principle an eleemosynary corporation, if the respondent is such, is without legal standing to claim the tax exemption now in question.' Page 814.

To support its conclusion the Court relied upon the general rule of construction relating to exemptions from taxation.
'Constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of the taxpayer claiming the exemption. He must clearly bring himself within the constitutional or statutory language upon which he relies.' Page 814.

The opinion of this office is therefore that the Columbia Music Festival Association is not exempted from the collection of admissions taxes.
Yours very truly,

G. Lewis Argoe, Jr.
Assistant Attorney General

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