

1973 S.C. Op. Atty. Gen. 306 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3632, 1973 WL 21084

Office of the Attorney General

State of South Carolina

Opinion No. 3632

September 27, 1973

**\*1 Furman University is an eleemosynary and nonprofit corporation that is not required to collect admissions tax for the use of its golfing facilities.**

Director

License Tax Division

South Carolina Tax Commission

This office has been asked to decide if the provisions of Section 65–802(4) of the South Carolina Code of Laws exempts from admissions tax the greens fees charged by Furman University to play its golf course.

Section 65–802 provides for the tax and subparagraph (4) exempts from the tax “\* \* \* admissions charged by any eleemosynary and nonprofit corporation or organization organized exclusively for religious, charitable, scientific or educational purposes; \* \* \*.”

On June 22, 1970, this office advised that the provisions of this section do not exempt admissions charged by the University of South Carolina as the University is a public corporation and cannot therefore be eleemosynary and nonprofit. We recognize that Furman University is not a public corporation as defined by our Court in the case of *York County Fair Association v. South Carolina Tax Commission*, 249 S.C. 337, 154 S.E. 2d 361, wherein the Court made the following statement:

“Those corporations are public which are created for public purposes only, connected with the administration of the government, and the interests and franchises of which are the exclusive property and domain of the government itself. \* \* \*

‘Private corporations are created for private as distinguished from purely public purposes, and they are not in contemplation of law public because it may have been supposed by the legislature that their establishment would promote either directly or consequentially the public interest.’ 18 Am. Jur. (2d), Corporations, Section 8, pp. 553, 554.’

To resolve the question it must be further decided whether Furman University is ‘an eleemosynary or nonprofit corporation or organization.’ In *State v. Heyward*, 3 Rich. L. (37 S.C.L.) 389, the Court made the following statements concerning the status of the Medical College in Charleston.

‘The division of corporations into public and private will be more simple and easily understood as political and private. Whatever belongs to the public, or people composing a government, is a public or political corporation. Private corporations are such as are instituted for the benefit of certain persons as individuals, or for the purpose of applying private funds or enterprise or skill to the public good. ‘Public corporations are such as exist for public political purposes only, such as counties, cities, towns and villages. They are founded by the government for public purposes, and the whole interest in them belongs to the public. But if the foundation be private, the corporation is private, however extensive the uses may be to which it is devoted by the founder, or the nature of the institution; \* \* \* ‘a hospital, founded by a private benefactor, is a private corporation, though dedicated by its charter to general charity. A college, founded and endowed in the same manner, is a private charity, though from its general and beneficent objects it may acquire the character of a public institution.’ (Citing 2 Kent Com. 222–3.)

\*2 In 18 Am. Jur. (2d), Corporation, Section 10, p. 556, it is stated that private corporations may be classified, according to whether they are incorporated for the purpose of earning profits for their members or not, into business corporations and eleemosynary corporations.

‘A corporation for profit is primarily a business corporation, organized with a view toward realizing gains to be distributed among its members. Eleemosynary corporations are those created for or devoted to charitable purposes or those supported by charity.’

In the case of *Columbia Country Club v. Livingston*, 252 S. C. 490, 167 S. E. 2d 300, brought to determine whether or not the Club was exempt from admission taxes, the Court held the Club to be nonprofit although chartered as a business corporation, stating that the purpose for which a corporation has been organized is a question of fact, to be determined from all the evidence, including statements in the charter and evidence concerning the circumstances surrounding its organization, the purposes and intentions of the incorporators, and the activities of the incorporation.

It is our opinion that Furman University is an eleemosynary and nonprofit corporation. The Supreme Court recognized it as an eleemosynary corporation in the case of *Furman University v. Livingston*, 244 S. C. 200, 136 S. E. 2d 254. Its charter and bylaws show it to be nonprofit and its history shows it to be nonprofit.

We conclude that the charges made by Furman University for the use of its golfing facilities are not subject to admissions tax by reason of Section 65–802(4) of the Code.

G. Lewis Argoe, Jr.  
Assistant Attorney General

1973 S.C. Op. Atty. Gen. 306 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3632, 1973 WL 21084

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.