



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

October 21, 2022

John McWilliams, Esq.
Attorney, Sunflower County Board of Supervisors
220 Second Street
Indianola, Mississippi 38751-0107

Re: Ad Valorem Tax Exemption for Charitable Society

Dear Mr. McWilliams:

The Office of the Attorney General has received your request for an official opinion.

Background

According to your request, a 501(c)(3) nonprofit corporation (“entity”) has requested that the Board of Supervisors (“Board”) grant it an ad valorem tax exemption on real property it owns in the county because it is a charitable society under Mississippi Code Annotated Section 27-31-1(d). You state that the entity has registered with the Mississippi Secretary of State and may now solicit charitable donations. The entity has provided the Board with a list of charitable and/or civic activities in which it is involved. You present the following questions for our consideration.

Questions Presented

1. Does the fact that the entity is a nonprofit corporation with a 501(c)(3) tax status and has properly registered as a charitable organization with the Secretary of State automatically authorize ad valorem tax exemption for all of its property?
2. Is the granting of such a tax exemption by the Board mandatory or discretionary?
3. May the Board grant an exemption for the percentage of the property actually in use for charitable purposes?
4. Do the limitations on the uses of property belonging to religious organizations in Section 79-11-33 also apply to a charitable society?

5. Is a tax exemption granted to a charitable organization permanent as to the property of that organization, or is it limited by the present use of such property? Is the Board required to review the use of such property each year in order for the exemption to continue?
6. What is the potential liability of the Board if the requested tax exempt status is denied? Is the Board subject to a suit by the requesting taxpayer?
7. What is the potential liability of the Board if the requested tax exempt status is granted? Is the Board subject to a suit by other taxpayers of the county whose taxes will be increased because of the loss of revenue attributable to this exemption?

Brief Response

1. Status as a 501(c)(3) nonprofit does not automatically qualify the entity as a charitable society as contemplated by Section 27-31-1(d).
2. The Board must determine whether the entity is actually a charitable society entitled to the exemption, which is mandatory for those qualifying under the statute.
3. The exemption flows from the property as a whole and can only be granted when it is used exclusively for the charitable society and not for profit.
4. Whether the property in question falls under Section 79-11-33 is a factual determination to be made by the Board.
5. The tax assessor/collector presents a new tax roll to the Board for its approval each year based on the current uses and valuations of taxable property.
6. This office is unable to answer questions of liability with an official opinion.
7. See our response to Question 6.

Applicable Law and Discussion

The statute under which the entity is seeking tax exemption is Section 27-31-1, which states, in pertinent part:

The following shall be exempt from taxation:

(d) All property, real or personal, belonging to any religious society, or ecclesiastical body, or any congregation thereof, *or to any charitable society*, or to any historical or patriotic association or society, or to any garden or pilgrimage club or association *and used exclusively for such society or association and not for profit*; not exceeding, however, the amount of land which such association or society may own as provided in Section 79-11-33.

(emphasis added). Section 27-31-1(d) exempts property, both real and personal, belonging to “any charitable society” which is “used exclusively for such society . . . and not for profit. . . .” *Id.* The Mississippi Supreme Court stated the following regarding tax exemptions: “Under our general rule, statutes exempting property from taxation are to be strictly construed in favor of the taxing authority and against the exemption.” *Hattiesburg Area Senior Services, Inc. v. Lamar County*, 633 So. 2d 440, 444 (Miss. 1994). The Court continued, regarding the qualification as a charitable society under the statute:

For an organization to qualify for a “charitable” exemption under § 27-31-1(d), it must thus be evident that: 1) the organization meets the definition of “charitable” as contemplated by the statute; 2) the property for which the exemption is sought to be claimed is “used exclusively for such society or association” and must not exceed the amount of land permitted to be owned under Section 79-11-33, Mississippi Code 1972 Annotated; and 3) the property is not used “for profit.”

Hattiesburg Area Senior Services, Inc., 633 So. 2d at 443 (Miss. 1994).

While the statute does not define charitable society, this office has previously approved the definition of charitable organization found in Section 79-11-501(a)(i)(B) as sufficient to define charitable society. MS AG Op., *Haque* at *3 (Feb. 20, 1998). Charitable organization is defined as:

(B) Any person actually or purporting to be established for any voluntary health and welfare, benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic, or other eleemosynary purpose or for the benefit of law enforcement personnel, fire fighters, or other public safety organizations, or any person employing in any manner a charitable appeal as the basis of any solicitation or an appeal that suggests that there is a charitable purpose to any solicitation and includes each local, county or area division within this state of such charitable organization, provided such local, county or area division has authority and discretion to disburse funds or property otherwise than by transfer to any parent organization.

Whether the entity or any other entity qualifies as a charitable society under the statute is a question of fact that this office cannot answer by way of official opinion. *Haque* at *3; MS AG Op., *Tennyson* at *1 (Dec. 14, 2001) (“This office has consistently opined that local governing authorities must make the factual determination as to whether a particular non-profit organization is qualified to receive tax exemptions.”) However, this office has long maintained that property owned by a 501(c)(3) does not automatically qualify for a tax exemption because it is a nonprofit. MS AG Op., *Woodard* at *2 (June 19, 2008); *see also* MS AG Op., *McWilliams* at *1 (Dec. 28, 1999) (“[R]eceipt of a Section 501 (c)(3) tax exemption alone does not qualify an entity to be exempt from ad valorem taxation.”); MS AG Op., *Hammack* at *1 (Apr. 19, 1996) (“A nonprofit organization is not eligible for tax exempt status under state law by virtue of the fact that it has tax exempt status under Section 501(c)(3) of the Internal Revenue Code.”)

In addition to the entity qualifying as a charitable society under the statute, its property must be used exclusively for its organization and not for profit. In previous opinions, this office has opined that “even if the organization you inquire about is one of the ones listed in the above statute (e.g., a religious or charitable society, fraternal or benevolent organization, etc.), the property still must be *used exclusively* for that purpose.” MS AG Op., *Woodard* at *1 (June 19, 2008). Such a determination is a factual one to be made by the Board. *Id.* at *2. In examining earlier opinions that denied tax exemptions to charitable and religious organizations, the Mississippi Supreme Court stated that it had “pierced the veil of the religious institution or charitable society and looked at the use being made of the property upon which the tax exemption was sought.” *Better Living Services, Inc. v. Bolivar County*, 587 So. 2d 914, 916 (Miss. 1991). The court found that in both of the earlier cases, the organization “had entered into a proprietary function in competition with private enterprise.” *Id.* The Board must take all of these factors into consideration when determining whether the entity qualifies as a charitable society and is entitled to the tax exemption.

Next, you ask whether the tax exemption is mandatory or discretionary. The introductory language of the statute states that “[t]he following *shall* be exempt . . .” Miss. Code Ann. § 27-31-1 (emphasis added). Again, it depends on the findings of the Board. If the Board ultimately finds that the entity qualifies as a charitable society under the statute, and its property is being used exclusively for its nonprofit purpose, then the mandatory language of the statute must be followed.

You next inquire about your authority to grant a partial exemption based on a specified percentage of the property. We assume that your question refers to a situation in which the property owned by the charitable society is not being used exclusively for the organization and its nonprofit purpose. This office has opined that, rather than the owner of the property, “[i]t is the property itself which is either taxed or exempt from taxation . . . and any exemption depends on the property’s exclusive, non-profit use.” MS AG Op., *Locke* at *1 (May 23, 2007); *see also Woodard* at *1-2 (opining that one of the criteria for the tax exemption is the property being used exclusively for the charitable, nonprofit purpose). Either the property is exclusively used for a charitable, nonprofit purpose and therefore exempt from ad valorem taxes, or it is not and does not qualify for the exemption.

Your fourth question asks whether the language in Section 27-31-1(d), which limits the type or use of property that may be exempted by religious organizations to that specified in Section 79-11-33, also applies to a charitable society. Section 79-11-33 begins thus: “Any religious society, ecclesiastical body and/or any congregation thereof may hold and own the following real property, but no other . . .” The statute proceeds to delineate the many and various uses available to property owned by religious organizations.

As this office explained in MS AG Op., *Barber* at *3 (Oct. 5, 2001), the Court in *Hattiesburg Area Senior Services, Inc.* stated that “Sec. 79-11-33, dealing specifically with religious societies, suggests strongly that the tax exempt property of all of the societies mentioned in the first clause of 27-31-1(d) is limited to the specific usages enumerated in [79-11-33].” (internal quotations omitted). Previously issued opinions from this office about Section 79-11-33 have stated that whether the property falls under that section is a factual determination to be made by the local authority based upon the best information available to it. MS AG Op., *Andrews* at *1 (Dec. 17, 1999); MS AG Op., *Barber* at *1 (Jan. 23, 1989); MS AG Op., *Lee* at *2 (Jan. 30, 1979).

Next, you ask whether a tax exemption granted to a charitable organization is permanent as to the property of that organization, or is it limited by the present use of such property, and whether the Board is required to review the use of such property each year in order for the exemption to continue. In answering a similar question about revocation of exemptions granted under Section 27-31-1(d), this office opined that “[a]ny change in an assessment from exempt to non-exempt (or vice-versa) is accomplished by going through the usual assessment process as laid out in Sections 27-35-1 through 27-35-711. . . .” MS AG Op., *Barry* at *2 (June 26, 2006). The tax assessor is responsible for placing all land on the tax rolls with parcels marked exempt or not, and the Board approves it in the process of certifying the tax roll. *Id.* A taxpayer will have the right to protest the published tax roll, and the tax assessor shall determine the true value of all classes of property annually. *Id.* For all Class I and Class II property—which would include the real property belonging to the entity— “the appraisal shall be made according to current use. . . .” Miss. Code Ann. § 27-35-50. “Whether or not an exemption under Section 27-31-1(d) of the Mississippi Code should be revoked is a factual determination which must be made by the [] Board of Supervisors.” *Barry* at *2.

Your sixth and seventh questions ask about potential liability of the Board. This office is unable to opine on questions of liability. Questions of liability involve “mixed issues of law and fact which cannot be addressed by an Attorney General’s opinion.” MS AG Op., *Head* at *1 (Nov. 25, 1998); *see also* MS AG Op., *Hammack* at *2 (Oct. 13, 1993) (“We cannot by opinion determine liability.”); MS AG Op., *Lawrence* at *1 (July 20, 2007) (“[W]e cannot speculate to the various potential liabilities which might arise and may not render an opinion in that regard.”).

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ *Misty Monroe*

Misty Monroe
Assistant Attorney General