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OFFICE OF THE ATTORNEY GENERAL



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Honorable Aubrey Ford, Jr.
District Judge
P.O. Box 703
Tuskegee, Alabama 36083

Juveniles - Charitable Purposes -
Probation and Parole - Dog Racing
Funds

Macon County Juvenile Probation
Agency may receive charity-day
proceeds; it need not apply for
recognition of tax-exempt status.

Dear Judge Ford:

This opinion is issued in response to your request for an
opinion from the Attorney General.

QUESTIONS

1. Is the Macon Juvenile County Probation Agency a recognized charity as defined in Section 20 of Act No. 83-575 since it is an agency of county government which is a nonprofit governmental agency?
2. As a governmental agency, must the Macon County Juvenile Probation Agency apply for tax-exempt status [501(c) status] with the Internal Revenue Service as required by Section 20 of Act No. 83-575 to receive charity-day money?

FACTS, LAW AND ANALYSIS

Charity days are held by the Greyhound track in Macon County pursuant to Section 20 of Act No. 83-575, which provides, in pertinent part, as follows:

"Upon request of recognized charities, the Racing Commission may extend said limitations of time for greyhound racing not to exceed three (3) days at any one time beyond the period otherwise provided by law so that any such track shall conduct a charity day or days of racing for any one or more recognized charities in Alabama which has a tax exempt status as provided for under the Internal Revenue Code. The total of all profits derived from the operation of such racing on such charity days, including all monies which would otherwise be received by the Racing Commission as taxes for such day's operations, shall be and become a part of the charity trust fund for which such racing on such days is conducted. The charity trust fund shall be administered as directed by the Racing Commission."
(Emphasis supplied.)

As you state in your letter requesting this opinion, the Macon County Juvenile Probation Agency was created by the county government, Article V, Section 6-36, page 151, Macon County Code, and is charged with the duty of carrying out the provisions of §§ 12-15-1, et seq., Code of Alabama 1975. It is operated by the District Court.

In an opinion to the Honorable Deborah Hill Biggers, dated January 12, 1989, Attorney General #89-00121, this office held that the county health department was a charity with tax-exempt status within the purview of Section 20, Act No. 83-575, eligible to receive charity-day proceeds from the Macon County Racing Commission. In that opinion we wrote:

"Internal Revenue Service Regulation Section 1.501(c)(2) states that included under the Section 501(c) definition of charity is any organization which provides relief of the poor and distressed or of the

underprivileged. Section 38-2-6, Code of Alabama 1975, provides that it is the duty and responsibility of the State Department of Human Resources to 'administer or supervise all forms of public assistance including general home relief, outdoor and indoor care for persons in need of assistance' and 'administer such welfare functions as may hereafter be invested in it by law.' Section 38-2-8, Code of Alabama 1975, establishes a County Department of Human Resources in each county in the State to administer welfare activities within the county. Under Alabama law, the Alabama State Department of Human Resources and the various County Departments of Human Resources constitute one governmental unit, one state agency. Williams v. James, 420 So.2d 773 (Ala. 1982). The Alabama State Department of Human Resources and the various County Departments of Human Resources, therefore, meet the definition of 'charity' as referred to in Section 20.

"However, Section 20 provides that only charities which have tax-exempt status under the Internal Revenue Code qualify for distribution from the Charity Trust Fund. As stated earlier, any organization that qualifies for exemption under Section 501(c) of the Internal Revenue Code is tax-exempt for the purposes of the charity trust fund. Governmental entities are not specifically listed under 501(c) for exemption. However, there are other organizations which have tax-exempt status than the ones listed under Section 501. The United States Supreme Court has held that organizations listed under Internal Revenue Code Section 170 are just as charitable and have the same meaning and effect as organizations under Section 501. Bob Jones University v. United States, 461 U.S. 574, 586-587 (1983). Under Section 170(c), a charitable contribution includes any contribution to or for the use of '[a] State, a possession of the United States, or

any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.' The State Department of Human Resources and the various County Departments of Human Resources are part of the 'State' for the purposes of this Section. The State Department of Human Resources and the various County Departments of Human Resources, therefore, qualify as 'recognized charities' which have 'tax-exempt status' under the Internal Revenue Code for the purposes of Section 20, of Act 83-575."

We also observed:

". . . Judicial decisions provide that a charity is generally one which provides a public benefit or serves a public purpose. Bob Jones University, supra, at 589-591. The duties and responsibilities of the County Departments of Health certainly fit into the category of public benefit and purpose. The various County Health Departments and Boards of Health are state government agencies. Williams v. Madison County Board of Health, 523 So.2d 453 (Ala.Civ.App. 1988). County Departments of Health, therefore, qualify as 'recognized charities' which have 'tax-exempt status,' under the Internal Revenue Code for the purpose of Section 20 of Act 83-575."

It is our opinion that the same reasoning applies in the situation here considered. Thus, your questions are to be answered that the Macon County Juvenile Probation Agency is a recognized charity which may receive charity-day proceeds, but it need not apply to the Internal Revenue Service for 501(c) exempt status.

CONCLUSION

The Macon County Juvenile Probation Agency is a charity within the purview of § 20 of Act No. 83-575, and may receive

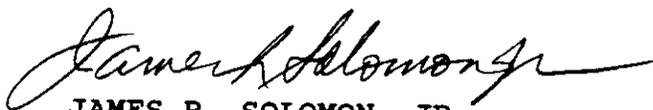
Honorable Aubrey Ford, Jr.
Page 5

charity-day distributions pursuant to that section. As an agency of the government, it need not formally apply for recognition of its tax-exempt status under the federal tax code.

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
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By:



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