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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

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501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.STATE.AL.US

Honorable Gaynell Hendricks
Jefferson County Tax Assessor
716 Richard Arrington Jr., Boulevard, North
Suite 170
Birmingham, Alabama 35203

Tax Assessors – Ad Valorem Taxes –
Exemptions – Charitable, Civic and
Eleemosynary Funds – Real Property

The fact that Alethia House receives rental income from its real property cannot be construed to constitute pecuniary gain or individual profit to defeat its tax-exempt status, so long as it is carrying out its intended purpose under section 40-9-12(a) of the Code of Alabama.

Dear Ms. Hendricks:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Does a nonprofit organization that owns properties for which it charges rent and receives income receive an exemption under section 40-9-12 of the Code if it is receiving contributions from certain nonprofit organizations under section 40-9-12?

FACTS AND ANALYSIS

You state in your request that Alethia House, a nonprofit organization, was denied an ad valorem tax exemption under section 40-9-1 of the Code of Alabama based on an opinion issued to Honorable

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Carolyn R. Middleton, Butler County Tax Assessor, dated November 3, 1986, A.G. No. 87-00042. The property in question must be used exclusively for charitable, educational, or religious purposes to receive the ad valorem tax exemption provided for under section 40-9-1. Alethia House, however, has requested an ad valorem tax exemption under section 40-9-12 of the Code.

Your question states that Alethia House receives funding from the United Way, a tax-exempt organization. Under section 40-9-12(a) of the Code, Alethia House is an institution for whom the United Way solicits funds and is therefore entitled to the ad valorem tax exemption set forth in that section. Section 40-9-12(a) of the Code states, in part, as follows:

[A]ll community chests and united appeal funds, and *all charitable, civic and eleemosynary organizations and institutions for whom they solicit funds*, and the real and personal property of all community chests and united appeal funds, and of all charitable, civic and eleemosynary institutions for whom they solicit funds . . . and of any branch or department of any of same heretofore or hereafter organized and existing in good faith in the State of Alabama, for other than pecuniary gain and not for individual profit, when such real or personal property shall be used by such associations or nonprofit corporations, their branches or departments in and about the conducting, maintaining, operating and carrying out of the program, work, principles, objectives, and policies of such associations or nonprofit corporations, their branches or departments, in any city or county of the State of Alabama, *are exempt from the payment of any and all state, county, and municipal taxes, licenses, fees, and charges of any nature whatsoever, including any privilege or excise tax heretofore or hereafter levied by the State of Alabama or any county or municipality thereof. The receipt, assessment or collection of any fee, admission, service charge, rent, dues, or any other item or charge by any such association or nonprofit corporation, its branches or departments from any person, firm, or corporation for any services rendered by any such association or*

nonprofit corporation, its branches or departments or for the use or occupancy of any real or personal property of any such association or nonprofit corporation, its branches or departments in or about the conducting, maintaining, operating, and carrying out of the program, work, principles, objectives, and policies of any such association or nonprofit corporation, its branches, or departments shall not be held or construed by any court, agency, officer, or commission of the State of Alabama, or any county or municipality thereof, to constitute pecuniary gain or individual profit by any such association or nonprofit corporation, its branches or departments, or the doing of business in such a manner as to prejudice or defeat, in any manner, the right and privilege of any such association or nonprofit corporation, its branches or departments to claim or rely upon or receive the exemption of such association or nonprofit corporation, its branches or departments and of all real and personal property thereof from taxation, as herein provided.

ALA. CODE § 40-9-12(a) (2011) (emphasis added).

Section 40-9-12(a) contains specific language regarding the income Alethia House receives from the rental of the property it owns. As the statute clearly reads above, the rental income Alethia House receives cannot be construed to constitute “pecuniary gain or individual profit” that would defeat its tax-exempt status, so long as Alethia House is using its real or personal property “in and about the conducting, maintaining, operating and carrying out of [its] program, work, principles, objectives, and policies” in compliance with section 40-9-12(a) of the Code. *Id.*

In other words, Alethia House, as all other organizations under the statute, must use its real and personal property for purposes that further the organization’s stated mission. The fact that it receives rental income from the property (so long as the rental income relates to the carrying on of its intended purpose) cannot be used to defeat the tax-exempt status.

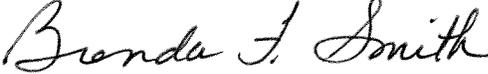
CONCLUSION

To be entitled to an ad valorem tax exemption, the property owned by Alethia House must be used in and about the conducting, maintaining, operating, and carrying out of its program, work, principles, objectives, and policies. The rental income it receives on the real property it owns cannot be used to defeat the tax-exempt status, so long as Alethia House is carrying out its stated purpose in compliance with section 40-9-12(a) of the Code.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Keith Maddox, Legal Division, Department of Revenue.

Sincerely,

LUTHER STRANGE
Attorney General
By:


BRENDA F. SMITH
Chief, Opinions Division

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