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JUL 15 1985

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Honorable R. E. Corbitt, Jr.
Tax Assessor, Macon County
P. O. Box 420
Tuskegee, AL 36083

Ad Valorem Taxes - Exemptions

Housing project owned by MCCAC
Homes Borrower Corporation exempt
from taxation.

Low-rent housing not necessarily
tax exempt.

Dear Mr. Corbitt:

In your request for an opinion, you enclose a copy of a letter that you received on behalf of MCCAC Homes Borrower Corporation regarding a request for an exemption from ad valorem taxation. The letter discloses that the MCCAC Homes Borrower Corporation (the Corporation) is organized under the non-profit corporation law of the State of Alabama (§10-3-1, et seq., Code of Alabama 1975) for the purpose of providing decent, safe and sanitary housing and related services for elderly and handicapped persons residing in the Tuskegee area. The corporation has been organized for approximately two years. When in full operation it will own and manage a forty-two unit housing project to serve elderly and handicapped persons. The corporation has made application for a direct loan from the United States Government to finance the project pursuant to §202 of the Housing Act of 1959 (12 U.S.C. 1701q), as amended. Housing will be provided to all residents without regard to their financial ability to pay in accordance with annual contributions contracts between the corporation and the U.S. Department of Housing and Urban Development (H.U.D.). Pursuant to such contracts, H.U.D. will provide rent subsidies for each elderly or handicapped family for up to one hundred percent of the rent obligation. Also, it is contemplated that no family will pay more than twenty-five percent

of its total income for rent. Thus, families without any income will have their rent obligations satisfied by the federal government.

Financing of the project pursuant to §202, supra, will be in the form of a forty year mortgage to be given by the corporation to the Federal Government in accordance with the terms of the law itself and the applicable regulations. The regulations define elderly as "A person having an impairment which is expected to be of long-continued and indefinite duration, is a substantial impediment to his/her ability to live independently, and is of a nature that such ability could be improved by more suitable housing conditions." The regulations require, and the corporation will provide, a full range of services, "including health, continuing education, welfare, informational, recreational, homemaker, counseling and referral services, as well as transportation where necessary to facilitate access to social services, and services designed to encourage and assist occupants to use the services and facilities made available."

You ask whether the corporation qualifies for the charitable exemption contained in §40-9-1, Code of Alabama 1975. This section exempts from ad valorem taxation "All property, real and personal, used exclusively for religious worship, for schools or for purposes purely charitable". Based upon the information provided by you, it is the opinion of this office that the property of the corporation will be used for purposes purely charitable. It is therefore exempt from taxation under §40-9-1.

In your request for an opinion, you also ask whether an apartment complex located in Macon County, which is owned jointly by Washington Chapel Charitable Foundation, Inc. and Washington Chapel A.M.E. Church, both of which are non-profit organizations, is exempt from ad valorem taxation. This office has previously stated that the mere fact that a corporation is organized under the provisions of the Alabama Non-Profit Corporation Act does not, in and of itself, entitle the corporation to have its property exempted from taxation. See opinion addressed to Honorable F. L. Waldon, Tax Assessor, Lamar County, dated June 5, 1985. Furthermore, the fact that property is owned by a charitable organization is not conclusive as to the tax status of its property, inasmuch as the use of the property, and not its ownership, determines its eligibility for the charitable exemption. See opinion addressed to Honorable Carolyn R. Middleton, Tax Assessor, Butler County, dated June 4, 1982.

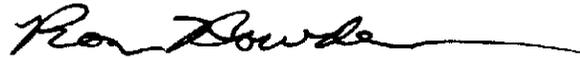
In the case of Community Park Village v. State Tax Commission, 652 S.W.2d 179 (Mo. App. 1983), the Missouri Court of Appeals held that a non-profit corporation organized for the stated purpose of providing rental housing for low and moderate income families was not entitled to a charitable tax exemption for its apartments where the sole and exclusive benefit to the tenants was reduced rent and there were no programs of social, moral or religious activities and no contributions to the general

welfare of the tenants. It can be seen from this that low income housing is not necessarily tax exempt, though it may be, depending upon the facts. This office does not have sufficient facts regarding the apartment complex owned by Washington Chapel to enable it to answer your question regarding this property.

Sincerely yours,

CHARLES A. GRADDICK
Attorney General

By-



RON BOWDEN
Assistant Attorney General

RB:je