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0124 Property Tax Exemptions in Colorado

Colorado Legislative Council

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Report to the Colorado General Assembly:

PROPERTY TAX EXEMPTIONS IN COLORADO

COLORADO LEGISLATIVE COUNCIL

LEGISLATIVE COUNCIL

OF THE

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The Legislative Council, which is composed of five Senators, six Representatives, and the presiding officers of the two houses, serves as a continuing research agency for the legislature through the maintenance of a trained staff. Between sessions, research activities are concentrated on the study of relatively broad problems formally proposed by legislators, and the publication and distribution of factual reports to aid in their solution.

During the sessions, the emphasis is on supplying legislators, on individual request, with personal memoranda, providing them with information needed to handle their own legislative problems. Reports and memoranda both give pertinent data in the form of facts, figures, arguments, and alternatives.

TAX EXEMPT PROPERTY

Legislative Council

Report To The

Colorado General Assembly

Research Publication No. 124
November, 1966

COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL

ROOM 341, STATE CAPITOL
DENVER, COLORADO 80203
222-9911 - EXTENSION 2285

November 29, 1966

To Members of the Forty-sixth Colorado General Assembly:

In accordance with the directives of House Joint Resolution No. 1024, 1965 regular session, the Legislative Council submits the accompanying report and recommendations prepared by its Committee on Tax Exempt Property concerning clarifications or changes in the constitution and statutes relating to property tax exemptions.

The report and recommendations of the committee appointed to carry out the study were approved by the Council at its meeting on November 28, 1966, for transmission to the members of the Forty-sixth General Assembly.

Respectfully submitted,

/s/ Senator Floyd Oliver
Chairman

FO/mp

COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL

ROOM 341, STATE CAPITOL
DENVER, COLORADO 80203
222-9911 - EXTENSION 2285

November 29, 1966

Senator Floyd Oliver, Chairman
Colorado Legislative Council
Room 341, State Capitol
Denver, Colorado

Dear Mr. Chairman:

Your committee appointed to carry out the studies requested by House Joint Resolution No. 1024, 1965 regular session, relating to tax exempt properties, submits herewith its final report and recommendations.

House Joint Resolution No. 1024, 1965 regular session, specifically directed the committee to review possible clarification or changes in the constitution and statutes relating to tax exempt property; needed improvement in the administration of the statutes; and revision of the system of keeping public records on exemptions heretofore granted, as well as current exemptions. The committee devoted this time to a review of exemptions on public property and private educational, religious, and charitable properties.

Respectfully submitted,

/s/ Senator Ruth Stockton
Chairman, Committee on Tax
Exempt Property

RS/mp

FOREWORD

Pursuant to the directives of House Joint Resolution No. 1024, 1965 regular session, the Legislative Council appointed the following committee to conduct the study of tax exempt property in Colorado:

Sen. Ruth Stockton, Chairman
Rep. Harold Adcock, Vice Chairman
Sen. John Bermingham
Sen. Fay DeBerard
Rep. Joseph V. Calabrese
Rep. James LaHaye
Rep. Hiram A. McNeil
Rep. Robert Schafer

The resolution specifically directed the committee to review possible clarification or changes in the constitution and statutes relating to tax exempt property; needed improvement in the administration of the statutes; and revision of the system of keeping public records on exemptions heretofore granted, as well as current exemptions. The committee established two phases for the study. The first phase, the 1965 interim study, was devoted to a review of the constitutional exemption granted to publicly owned property. The second phase, the 1966 interim study, was devoted to a review of statutory exemptions and private educational, religious, and charitable properties.

Assisting the committee in the study were Mr. Jim Wilson of the Legislative Reference Office, members of the Colorado Tax Commission, and Mr. Dave Morrissey of the Council staff.

November 29, 1966

Lyle C. Kyle
Director

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Since 1963 the Legislative Council Committee on Tax Exempt Property has wrestled with the problems of tax exemptions for various classes of property. In order to focus on the impact of exemptions, the committee requested the Council staff to develop an inventory of property exemptions in Colorado. Early in this study it became apparent that records of county assessors with respect to exempt properties were woefully inadequate, and the Tax Commission now is in the process of updating the tax exempt records of the county assessors.

A preliminary estimate of the value of tax exempt property in Colorado was completed by the Council staff in December of 1964. This estimate reveals that the major portion of tax exempt properties are under federal, state, and municipal ownership. The minimum estimated assessed value of federal, state, and municipal properties approximates $533,000,000 or 65.3 per cent of all tax exempt property in Colorado. (This figure does not include facilities for higher education which were reported separately.) Because of the relatively large amount of public exempt property, the committee concentrated its efforts in this area in 1965.

Public Property

Since the Constitution of the state was adopted, it has contained a provision exempting public property from ad valorem taxes (Article X, Section 4). According to the decisions of the Colorado Supreme Court, Article X, Section 4, means that all properties of the state, cities and towns, counties, public libraries, and other municipal corporations are exempt from ad valorem taxes regardless of "use"; "ownership" is the only criterion for granting an ad valorem exemption for public property.[1] Furthermore, in 1961 the General Assembly made an unsuccessful attempt to minimize the impact of the state's acquisition of private taxable lands by requiring the payment of fees in lieu of taxes on lands removed from the tax rolls by the purchases of the Game, Fish, and Parks Department. The Colorado Supreme Court declared this act unconstitutional -- Game and Fish Commission of Colorado v. Cleland N. Feast, et al (1965), No. 20489. Thus a constitutional amendment is needed if the General Assembly is to exercise discretion with respect to tax exemptions on public property.

The acquisition of large tracts of taxable land in certain counties in Colorado by state, municipal, and other local units of

1. Stewart v. City and County of Denver (1921), 70 Colo. 514.

government has reduced the tax base of a number of counties. The committee recognizes that purchases of taxable land by government units often are made in the general interest of the over-all economy of the state; however, the committee is concerned that benefits derived are obtained at the expense of communities in which the acquisitions are made. For instance, despite the fact that tax exempt lands are removed from the tax rolls, usually there is no corresponding reduction in the need for miscellaneous county services, schools, fire and police protection, etc., and there even may be an increase in the need for these services. Therefore, any reduction in the tax base often adds to the mill levies of existing property tax payers. In this manner, continuing governmental expenses for services to the tax exempt property actually is borne by the taxpayers of the county in which the land is purchased.

Committee Recommendations

The committee believes that the burden resulting from erosion of the tax base of a local community must be considered as part of the expense for obtaining tax exempt property and should be met by the community deriving benefit from the acquisition of the property. With this in mind, the committee reaffirms its 1965 recommendation for a proposed constitutional amendment to allow the General Assembly to provide for payments in lieu of taxes in the event the tax base of a local community is adversely affected by removal of land from the tax rolls by state and local governmental units. The committee again recommends that Article X, Section 4, Colorado Constitution, be amended as follows:

> Section 4. Public property exempt - except. The property, real and personal, of the state, counties, cities, towns, and other municipal AND QUASI-MUNICIPAL corporations, and public libraries shall be exempt from taxation, PROVIDED, THAT THE GENERAL ASSEMBLY MAY PROVIDE BY LAW FOR THE MAKING OF PAYMENTS IN LIEU OF TAXES WITH RESPECT TO ANY SUCH PROPERTY.

Private Religious, Charitable, and Educational Property

Article X, Section 5, Colorado Constitution, provides: "Property, real and personal, that is used solely and exclusively for religious worship, for schools or for strictly charitable purposes, also cemeteries not used or held for private or corporate profit, shall be exempt from taxation, unless otherwise provided by general law." The provision "unless otherwise provided by general law" gives discretion to the General Assembly to limit or qualify exemptions on private real property. As previously mentioned, similar discretionary power is lacking with respect to public properties. Although the General Assembly has authority to limit exemptions on private real property, the power to extend exemptions

to "homesteads" and residences of aged persons is prohibited. Article X, Section 6, Colorado Constitution, states: "All laws exempting from taxation, property other than that heretofore mentioned, shall be void;..." In any event, with the exception of adding a definition for schools and requiring "ownership" as a prerequisite for obtaining a property tax exemption, the General Assembly has accepted the provisions of Article X, Section 5, without reservation.[2]

Impact of Private Tax Exempt Real Property

Exemptions for private religious, charitable, and educational properties comprise about 15 per cent of the tax exempt property in Colorado (see Research Publication 102, Colorado Legislative Council). If this property were added to the tax rolls, the estimated tax base of counties, municipalities, and school districts would be increased by only three per cent. Although this burden appears to be relatively insignificant as a state total, the impact to individual counties and cities could be appreciable. For instance, latest available estimates of the assessed value of private tax exempt property in the City and County of Denver totals $70,000,000 or 6.6 per cent of the tax base of the community.

In the April, 1966, issue of The National Civic Review,[3] it was reported that housing projects sponsored by churches, labor unions, and other nonprofit organizations probably would account for a rapidly growing share of homebuilding activity in the next few years. Three reasons are cited: 1) the Senior Citizen Housing Act: -- Public Law 87-723 -- passed by Congress, 2) a growing public awareness of the need for adequate housing for the elderly and disadvantaged, and 3) an increase in the number of nonprofit groups entering the housing field. Substantiating these findings is the recent growth in senior citizen "high rise" apartments in the urban areas of Colorado. Since the advent of the federal legislation in 1962, the original cost value of these homes for the elderly has exceeded $25,000,000.

Property tax exemptions for private institutions traditionally are based on two assumptions: 1) if the services were not performed by a private agency, the burdens of government would increase; and 2) tax exemptions foster moral, cultural, and social development of the community. Separation of church and state also is considered a fundamental purpose in granting property tax exemptions to religious organizations. In any event, the state of Colorado recognizes the worthiness of certain types of activities

2. Section 137-2-1, C.R.S. 1963, as amended.
3. The National Civic Review, April 1966, page 225.

and has attempted to encourage these programs through a subsidy, that is, exemption from ad valorem taxes. The committee is concerned, however, that the subsidy fostered at the state level is not supported by the over-all revenue sources of the state; rather, the subsidy for this state program is borne by the tax base of local government. The reason for this is that the property tax is the prime source of revenue for local government. In 1965, property taxes levied in Colorado amounted to $34,344,328 for cities and towns, $63,623,246 for counties, and $186,252,599 for public schools. The Local Affairs Study Commission also reports that from 38 per cent to 50 per cent of all local government revenues are derived from property taxes.

In a sense, the General Assembly has recognized that the ad valorem tax base is not sufficient to meet all the needs of local government, and that tax exemptions granted at the state level reduce the effectiveness of the property tax. The General Assembly has minimized this adverse impact to one sector of local government -- schools -- through the "School Foundation Act." The formula for the distribution of state school monies is based on local effort encompassing property tax valuations and adjusted gross income as measures of local ability to pay. Thus local communities with a relatively large amount of exempt property receive a proportionately higher amount of state school monies.

On the other hand, cities and towns receive little in the way of state support. Article X, Section 7, prohibits the General Assembly from imposing taxes for the purposes of any county, city, town or other municipal corporation, but authority may be vested with municipal corporations to assess and collect taxes for the support of local government. Municipalities must maintain services at a level that meets the needs of the exempt institutions. It is true that some of the direct services to exempt institutions are supported through a system of fees or charges. The nature of the service usually determines whether tax exempt institutions pay for benefits received. Benefits of municipal water and power services, for instance, easily may be assessed on a fee basis according to the quantity of service provided. Trash collection costs and special assessments for curbs, streets, gutters, and paving also are collected from exempt institutions. Finally, tax exempt institutions contribute to the costs of municipal services through building permit fees and charges for land use variances.

Alternate Suggestions to Reduce the Impact of Tax Exemptions

Fees in Lieu of Taxes. A number of alternate suggestions were made to the committee to reduce the impact of tax exempt property on local government. First of all, the committee explored the possibility of expanding the present system of fees in lieu of taxes on certain types of private property. Again, it must be kept in mind that any proposed legislation could not be extended to include public properties in view of the constitutional limitation

prohibiting modification of the exemption for public properties. The committee called upon the expertise of the Colorado Municipal League to assist in an exploration of service charges in lieu of taxes for exempt charitable, religious, and educational properties.

With this in mind, a major role of municipal government is to protect property -- police and fire fighting services, ordinance enforcement, planning and zoning, and nuisance regulation. Although these activities of local government are of direct benefit to all property owners, measurement of value received cannot be computed in the same manner as a simple meter reading for water or electric power consumption. Nevertheless, these services are essential to owners of both taxable property and owners of tax exempt property. Other governmental activities of benefit to nontaxable institutions include: street maintenance, street cleaning and lighting, snow removal, and transportation services.

Problems Posed by Service Charges. Perhaps an initial roadblock to the "service charge concept" is Article X, Section 3, Colorado Constitution. In part, this section provides: "All taxes shall be uniform upon each of the various classes of real and personal property located within the territorial limits of the authority levying the tax, which shall prescribe such methods and regulations as shall secure just and equalized valuations for assessments of taxes upon all property, real and personal, located within the territorial limits of the authority levying the tax,..." Measurement and equalization of costs of governmental services based on a service charge rated according to benefits received on the one hand and a general tax on the other would be extremely difficult to achieve. How could uniformity be achieved if one segment of the population pays a general tax, based on assessed valuation of property, while another group pays a specific fee according to benefits received?

As previously mentioned, municipal services directly affect property owners. Perhaps the following list of functions of city and town government may best illustrate the types of services available to property owners:

1) Water*
2) Sewer*
3) Electricity*
4) Public Works Administration
    A) Street paving, curbs, gutters, etc. (special assessments)*
    B) Street cleaning
    C) Snow removal
    D) Street lighting

*Functions in which institutions exempt from ad valorem taxes pay service charges, fees, or special assessments.

5) Planning and zoning
   A) Construction permits*
   B) Variance of land use regulations*

6) Nuisance regulation
7) Fire protection
8) Police protection
9) Sanitation*
10) Transportation
11) Ordinance enforcement
12) Libraries
13) Parks and recreation facilities
14) General administration

Segregation of the aforementioned items into areas of direct benefit to tax exempt property owners is difficult. Certainly it is easier to justify assessment of costs for fire and police services to the exempt institutions than services of libraries, parks, and over-all costs of city administration. Nevertheless, to some degree, most of the functions enumerated above provide some service to tax exempt property owners.

Assuming that constitutional objections to service charges could be met, a system of service fees certainly might add to the complexity of local government administration, and in view of the fact that an aggregate increase of local revenues of only three per cent would result if all private exempt institutions were placed on the tax rolls, the amount of revenue derived from a service charge program probably would not be sufficient to offset the administrative costs involved.

Non-school Taxes For Exempt Properties. In view of the problems posed by fees, a second suggestion was made to the committee to recommend requiring private tax exempt institutions to pay non-school property taxes. The suggestion was made on the basis that elimination of school taxes would reduce the major burden of property taxes, while not forcing a reduction in the tax base of towns and counties. State aid to schools would continue to offset the reduction to the property tax base for schools.

In viewing this suggestion, the committee expressed concern with the impact of nonschool taxes on the tax exempt institutions.

Municipal, general county, and special improvement property levies in 1965 totaled $97,967,000. An increase of three per cent,

*Functions in which institutions exempt from ad valorem taxes pay service charges, fees, or special assessments.

or $2,939,000 probably would result if private exempt institutions were added to the tax rolls of cities, counties (excluding general county school taxes), and special districts. Although the increased revenue to local governments does not appear to be substantial, the impact to individual exempt institutions would be significant. For instance, municipal mill levies range from 1.70 mills in Bonanza to 46.00 mills in Cripple Creek and Victor, Colorado. In comparison, the average municipal mill levy reported by the Tax Commission in 1965 is 14.72 mills. Other cities and towns with mill levies in excess of 30 mills include: Central City (42.00), Crested Butte (37.35), De Beque (32.00), Erie (37.89), Frederick (35.00), Frisco (31.00), Genoa (32.62), Hayden (33.25), Log Lane Village (35.60), Meade (33.39), Milliken (33.00), Ouray (34.00), Rangely (40.00), Red Cliff (44.69), and Silverton (39.00).

For the most part, the smaller cities and towns lean more heavily on the property tax for support than the larger communities. For example, the mill levies in the ten largest cities in Colorado in 1965 were as follows: Denver (14.60), Pueblo (19.00), Colorado Springs (19.38), Aurora (10.50), Boulder (9.70), Englewood (15.30), Arvada (13.00), Greeley (17.75), Fort Collins (15.09), Grand Junction (15.00), and Littleton (10.70). Total general government operating revenues in the City and County of Denver in 1964 amounted to $76,787,000; $26,168,000 or 34.1 per cent of that total revenue was derived from property taxes.

Requiring private tax exempt institutions to pay property taxes for nonschool purposes would result in a state-wide average property tax to private religious, charitable, and educational institutions of 34.47 per cent of the property tax levies on current taxable property.

Clarification of Standards for Granting Tax Exemptions. The third and final major suggestion made to the committee involved re-examination of the standards by which institutions qualify for tax exempt status. As pointed out by Mr. Carper, Tax Commissioner, at the March 29 meeting of the committee:

> ...the constitution contains four lines for the exemption of charitable, religious, and educational property. Similarly, the statutes contain only 13 lines with respect to the exemption of private property. Thus the criteria for exemption of charitable and religious property is outlined in the Constitution and statutes as interpreted by the Colorado Supreme Court. Since the Court has followed a liberal rule of construction on ruling on exempt status of religious, charitable, and educational properties, are the guidelines established by the Supreme Court valid today? Is there a need for redefining what constitutes a charity?

Prior to 1961, the county assessors were charged with the responsibility for granting tax exemptions to religious, charitable, and educational institutions. It would be safe to say that within the guidelines of court decisions there were 63 different bases for granting tax exemptions. Chapter 260, Session Laws of Colorado 1961, vested authority with the Tax Commission to determine the propriety of exemptions in Colorado. The Commission is in the process of reviewing every ad valorem tax exemption for charitable, religious, and educational property in Colorado, as well as granting or denying all new applications for exemptions. In order to review the basis of decisions made by the Commission, the committee staff reviewed 1191 claims filed with the Commission.

Basis Upon Which Exemptions Are Granted

The exemptions granted by the Tax Commission closely follow the rulings of the Colorado Supreme Court, and, in the event the Court has not ruled on a specific major class of property, such as "senior citizen housing," the Commission usually requests the advice of the Attorney General. A detailed analysis of Supreme Court decisions upon which the Tax Commission has based a number of its decisions is contained in the accompanying staff report. In general, the determination of what constitutes a charity poses the most difficult question for the Commission. Mr. Howard Latting, Chairman of the Colorado Tax Commission, suggested that the following six qualifications are essential conditions for an organization to be granted a tax exemption as a charity in Colorado:

1) the organization is nonprofit;

2) no part of the net earnings of the organization inures to any private shareholder or individual;

3) the exempt property is used for the actual operation of the claimed exempt activity;

4) the property is not used or operated by the owner or any other person so as to benefit anyone through the distribution of profits, payment of excessive charges or compensations or the more advantageous pursuit of their business or profession;

5) the property is not used for fraternal or lodge purposes or for social club purposes unless such use is purely incidental to the charitable activities for which the exemption is claimed; and

6) all properties of the corporation are irrevocably dedicated to charitable purposes and upon liquidation of the corporation, no benefits will inure

to any private person, but shall be transferred to some other nonprofit charitable organization.

Extent of Exemptions. Once a decision is made that an institution qualifies as a charitable, religious, or educational activity, the Tax Commission must then determine that the property actually is used for the purpose for which the exemption is granted. In other words, a church or charitable activity which owns income property or even vacant land held for future development can not qualify for a property tax exemption for such property. Also the Commission constantly is faced with property usage which is related to the activities or functions of the exempt institution but which may not be essential to the purpose. For instance, are parking lots essential to the conduct of church services? The Commission has ruled that when a parking lot is used solely for the exempt activity, a property tax exemption may be granted. However, if parking spaces are leased for other reasons, the exemption is denied. In conclusion, the committee agrees with the strict interpretations of the Tax Commission that the use of the property must be essential to the purpose for which the exemption is granted, if a property tax exemption is to be allowed. The committee applauds the decisions of the Commission and supports continued efforts to interpret the law in a strict manner.

Senior Citizen Housing. Perhaps the most controversial area of tax exemptions reviewed by the committee involved senior citizen housing. The Federal Housing Authority under Public Law 87-723 provides low interest loans to nonprofit corporations to assist in developing low-cost housing for the elderly. Specifically, the federal act is designed to encourage the development of new or rehabilitated living units which are for the use of elderly persons (over 62 years of age) or handicapped persons. Following enactment of Public Law 87-723 in 1962, charitable, religious, and trade associations have established a number of senior citizen homes in the urban areas of Colorado. The estimated total fixed assets of these homes is in excess of $25,000,000.

Charges were made to the committee that some senior citizen homes were being constructed as luxury-type apartments and that the income of a number of dwellers was above average. Furthermore, it was brought to the attention of the committee that in order to achieve full occupancy, units were being rented to physically able persons under 62 years of age. In other words, standards were not being met either as to income or age. Many of the senior citizen homes also require an occupancy fee ranging from $600 to $8,000, suggesting that little consideration is given to the destitute. For these reasons, charitable tax exemptions for senior citizen homes are being questioned.

On the other hand, after careful analysis of the concept of charity as outlined by the Colorado Supreme Court decisions and a recent California court decision, Fifield Manor v. County of Los Angeles (1961), 10 Cal. 242, the Tax Commission, fortified with an

opinion of the Attorney General, ruled that senior citizen homes qualify as a charitable activity for the purpose of obtaining an ad valorem tax exemption in Colorado.

The Fifield Case appears to be especially pertinent to Colorado in view of the similarity of constitutional provisions of Colorado and California with respect to charitable property tax exemptions. The California District Court of Appeals ruled in Fifield Manor v. County of Los Angeles (1961) 10 Cal. Reporter 242, that nonprofit corporations were entitled to property tax exemption for property devoted to homes for the aged, although occupied mainly by middle income persons who had been self-employed, and where charges did not yield more than actual costs. The court concluded:

> The courts have long recognized and declared that charity is not limited to giving alms, is not confined to relief of the poor, may extend to the rich in areas where they are not able to care for themselves, and extends to those social objectives which promote the general welfare and would be served by the government in the absence of philanthropic enterprises such as homes for the aged. Historically, and well-nigh unanimously, the courts have found homes for the aged to be charitable institutions where conducted at cost or less. They have also recognized that man, especially the old, does not live by bread alone; that though he be able to pay for all material wants he nevertheless may be dependent upon his fellow man or the government to protect him from the haunting fear of loss of all his property with resultant poverty, fear of illness or other physical disability overtaking him with no one near to help, fear of the loneliness arising from absence of social contacts, fear of any of the tragedies of old age where there is no one standing by to help.
>
> The test is not found in the question of what financial ability does the recipient possess, but what are his needs, alleviation of which constitutes a worthy social value. We apprehend that the financial test becomes pertinent only when the occupants of an old age home pay more than the cost to the home of what it furnishes them.
>
> (1) In the light of these authorities it seems clear that a home for the aged which caters to wealthy persons and furnishes them those services and care needed by the old and infirm, rich or poor, does not cease to be a charitable institution so long as its charges do not yield more than the actual cost of operation; that it does

cease to have that status when the occupants pay more than the cost to the home, thus resulting in a profit and converting it into a non-charitable institution.

Committee Recommendations

Senior Citizen Homes. The committee agrees that traditionally aid to the aged has been recognized as a charitable function and that relief of poverty is not the only condition for qualifying for a tax exemption as a charity. It is a matter of common knowledge that aged people require care and attention apart from financial assistance. Senior citizen homes do provide special services and equipment. Among the services readily available for most senior homes are: emergency medical care; temporary nursing services; central dining facilities; surveillance of residents to insure their well-being; emergency alarms; specially designed facilities to assist the handicapped and the infirm such as wider doorways, low shelving, handrails for bathtubs, and nonskid floors; and finally site locations accessible to transportation, medical services, churches, and other community activities.

The committee expresses concern, however, that instances exist in which persons residing in senior homes are less than 62 years of age and are not handicapped. The committee believes the law should be amended to prevent abuse of the concept on which senior citizen housing is based. In other words, employed physically-able persons under 62 years of age should be prohibited from taking advantage of this tax exemption. Therefore, the committee recommends the following amendment to Section 137-2-1 (8), 1965 Permanent Supplement to C.R.S. 1963:

> Property, real and personal, that is owned and used solely and exclusively for strictly charitable purposes, and not for private or corporate profit. SENIOR CITIZEN HOUSING SHALL BE CLASSED AS CHARITABLE ENTERPRISES AND SHALL BE EXEMPT FROM TAXATION; PROVIDED THAT SUCH HOUSING UNITS SHALL BE NONPROFIT OPERATIONS AND THE PROPERTY REAL AND PERSONAL IS DEDICATED IN PERPETUITY TO CHARITABLE PURPOSES; AND PROVIDED FURTHER THAT THE HOUSING UNITS ARE SPECIFICALLY DESIGNED FOR ELDERLY OR HANDICAPPED PERSONS. A SENIOR CITIZEN HOUSING OPERATION SHALL NOT BE EXEMPT IF MORE THAN 5 PER CENT OF THE UNITS ARE LEASED TO PERSONS UNDER 62 YEARS OF AGE WHO ARE NOT HANDICAPPED. FOR PURPOSES OF THIS SUBSECTION, A "HANDICAPPED PERSON" MEANS A PERSON WHO HAS A PHYSICAL IMPAIRMENT WHICH:
>
> (1) IS EXPECTED TO BE OF LONG-CONTINUED AND INDEFINITE DURATION;

(2) SUBSTANTIALLY IMPEDES HIS ABILITY TO LIVE INDEPENDENTLY; AND

(3) IS OF SUCH NATURE THAT HIS ABILITY TO LIVE INDEPENDENTLY COULD BE IMPROVED BY MORE SUITABLE HOUSING CONDITIONS.

Other Charitable Activities. In viewing property tax exemptions for charitable activities (fraternal lodges, hospitals, veterans' associations, etc.) the committee recommends that all institutions filing for a tax exemption be required to demonstrate financial evidence of their charitable activities. The committee considered recommending enactment of specific legislation requiring institutions qualifying for a charitable tax exemption to allocate a minimum percentage of fees, dues, donations, charges, and other income to purely charitable activities. The committee, however, did not have sufficient information on the financial status of charities to develop a reasonable minimum standard. Therefore, the committee simply recommends that as a condition for obtaining an ad valorem tax exemption the Tax Commission require each charitable organization to submit an annual financial statement or tax return to the Commission. The financial statement should contain an itemized list of expenses including amounts spent for strictly charitable purposes. Also, the committee recommends that the Tax Commission, after analyzing such financial statements, report back to the General Assembly with specific recommendations on more specific standards to be written into law regarding charitable exemptions.

Religious Exemptions. The committee believes that the intent of the exemption for religious worship outlined in the Constitution (Article X, Section 5) should be strictly construed. The Tax Commission currently denies exemptions for vacant land, miscellaneous income property, and other miscellaneous property that is not directly involved or necessary to the conduct of religious services. The committee supports the rulings of the Commission on this matter and suggests that the following clarifying language be added to Section 137-2-1 (6), 1965 Permanent Supplement to C.R.S. 1963:

(6) Property, real and personal, that is owned and used solely and exclusively for religious worship, and not for private or corporate profit. THE EXEMPTION CONTEMPLATED IN THIS SUBSECTION SHALL BE LIMITED TO ANY BUILDING OR EDIFICE IN WHICH RELIGIOUS WORSHIP IS CONDUCTED, AND ANY LAND WHICH IS ESSENTIAL TO MEET ZONING STANDARDS AND BUILDING REQUIREMENTS, OR PROVIDE PARKING.

TAX EXEMPT PROPERTY

A study of tax exempt property was initiated in the 1963-64 biennium under a Legislative Council Committee on Tax Exempt Property. At the direction of the committee, the first two years were devoted to an inventory of all tax exempt property in Colorado and preempted an opportunity for the committee to spend needed time to review possible changes in constitutional or statutory provisions.

H.J.R. 1024, 1965 session, specifically directed the committee to review possible clarification or changes in the constitution and statutes relating to tax exempt property; needed improvement in the administration of the statutes; and revision of the system of keeping public records on exemptions heretofore granted, as well as current exemptions. The Committee on Tax Exempt Property established two phases for the study of property tax exemptions: 1) the 1965 interim study period was devoted to a review of public property; and 2) the committee utilized the 1966 interim for a review of private educational, religious, and charitable properties.

PROPERTY TAX EXEMPTIONS FOR PUBLIC PROPERTIES

Since the adoption of Colorado's Constitution, there has been a provision exempting public property from ad valorem taxes. This provision has remained unchanged since enactment of the Constitution and reads as follows:

> The property, real and personal, of the state, counties, cities, towns and other municipal corporations and public libraries, shall be exempt from taxation.

Article X, Section 4, Colorado Constitution, according to decisions of the Colorado Supreme Court, means that ownership is the only factor to be considered in determining whether public property is exempt from property taxes. For example, in Stewart v. City and County of Denver (1921), 70 Colo. 514, the court held:

> According to the express language of the constitution, there is but one condition essential to their (the land's) exemption from taxation, and that is ownership by the city.
>
> In this case the exemption from taxation of the property of cities is so clear and expressive that there would seem to be no room for any doubt, or necessity of resorting to any rule of construction. The exemption is absolute, and depends upon no condition but ownership by the city.

Thus, the court ruled that regardless of the use of the property or the fact that the property owned by one governmental jurisdiction is located in another jurisdiction, the properties of the state of Colorado and local government jurisdictions are tax exempt.

With respect to federal properties, no mention is made in Colorado's Constitution of the exempt status of federal properties. Colorado's Enabling Act (Section 4) provides:

> ..., and that no taxes shall be imposed by the state on lands or property therein belonging to or which may hereafter be purchased by the United States.

The impact of this blanket exemption for federal properties may be minimized by recent decisions of the United States Supreme Court, which will be discussed in detail in a later section.

Statutory Exemption of Public Property

The statutory provision relating to the taxation of public property is contained in Section 137-2-1(5), 1965 Permanent Cumulative Supplement to C.R.S. 1963. This subsection, in accordance with the constitution, exempts:

> (5) Public libraries and the property, real and personal, of the state and its political subdivisions.

The General Assembly made an unsuccessful attempt to require the payment of fees in lieu of taxes on lands acquired by the Game, Fish, and Parks Department in 1961, by requiring a school fee equivalent to twelve mills on such land. The constitutionality of the fees on game and fish lands was contested first in the District Court of Denver where it was declared unconstitutional, and later that decision was appealed to the Supreme Court of Colorado (Game and Fish Commission of Colorado v. Cleland N. Feast, et al, No. 20489, Colorado Supreme Court). In part, the court held:

"We are not impressed -- nor should we be -- by the fact that the levy is labeled by the legislature as a 'school fee' rather than a school tax. See Walker v. Bedford, 93 Colo. 400, 26 P. 2d 1051 (1933). In nearly all respects this section levies a tax on State Game and Fish Commission property identical with the tax levied in each affected school district on private property. Therefore, we are in accord with the trial court's statement wherein it said:

> In our opinion, the legislation is an attempt by the legislature to do indirectly what cannot be done directly. It seems apparent that the proposed fees are to replace the taxes that had been paid by the individuals who owned the property before it was acqured by the Game and Fish Commission. The fees, as shown above, are computed on an assessment based on the value of the property. The statutes contain no element of regulation or restraint pertaining to game and fish laws whereby it could be argued that they are an excise fee or tax. The legislation, in

> our opinion, is for the primary purpose of raising revenue. When this is the case, the fee loses its character, as such, and becomes a tax for revenue. Although, the legislature uses the word 'fees,' the language of the legislature in denominating the nature of a tax or fee to be assessed is not determinative of its character. In our opinion, the fee being computed on an assessment based on valuation is a tax and is in violation of Article 10, Section 4 of the State Constitution."

Constitutional Provisions in Other States

The exemption of public properties from taxation under Colorado's Constitution is typical of the provision of the constitutions of at least 17 other states -- Arizona, Arkansas, Idaho, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Oklahoma, Utah, Virginia, and Washington. The remaining state constitutions appear to be more strict in allowing property tax exemptions for public properties. Some states -- Tennessee, Texas, South Carolina, and Wyoming -- limit property tax exemptions to property used for a "governmental" purpose. A distinction between a "proprietary" purpose and a "governmental" purpose is outlined in a Wyoming Supreme Court Case -- Town of Pine Bluffs v. State Board of Equalization (1958), 333 P.2nd 700. The court held that the sale of electricity by a municipality through a municipally owned electric plant is a proprietary and not a governmental function. A tax exemption for a municipal electric plant in Wyoming was denied on the basis of this ruling by the Wyoming court.

The Wyoming Constitution (Article 15, Section 12) provides:

> Exemptions from taxation. The property of the United States, the state, counties, cities, towns, school districts and municipal corporations when used primarily for a governmental purpose, and public libraries, lots with the buildings thereon used exclusively for religious worship, church parsonages, church schools, and public cemeteries, shall be exempt from taxation and such other property as the legislature may by general law provide.
>
> The following statement shall be enclosed in the foregoing proposed amendment by the secretary of the State of Wyoming:
>
> This proposed amendment to the Constitution of the State of Wyoming allows property

> of the Federal, State and political subdivisions thereof, to be subject to taxation in the event that such property is being used for purposes other than governmental, in order that nongovernmental activities upon governmental lands can bear their fair share of the tax burden within this state.

The constitutions of the states of California and South Dakota permit limited taxation of public properties under special circumstances. Article XIII, Section 1, California Constitution provides:

> ...and further provided, that property used for free public libraries and free museums, growing crops, property used exclusively for public schools, and such as may belong to this State, or to any county, city and county, or municipal corporation within this State shall be exempt from taxation, except such lands and the improvements thereon located outside of the county, city and county, or municipal corporation owning same as were subject to taxation at the time of the acquisition of the same by said county, city and county, or municipal corporation; provided, that no improvements of any character whatever constructed by any county, city and county, or municipal corporation shall be subject to taxation. All lands or improvements thereon, belonging to any county, city and county, or municipal corporation, not exempt from taxation, shall be assessed by the assessor of the county, city and county, or municipal corporation in which said lands or improvements are located, and said assessment shall be subject to review equalization and adjustment by the State Board of Equalization ...

The apparent purpose of the aforementioned provision is to safeguard the tax revenue of small counties in which large municipal corporations purchase extensive holdings, and which, except for the provision, would be exempt from local taxation.

On the other hand, the South Dakota Constitution (Article XI, Section 5) provides that:

> The property of the United States and of the state, county and municipal corporations, both real and personal, shall be exempt from taxation, provided, however, that all state owned lands acquired under the provisions of the rural credit act may be taxed by the local taxing districts for county, township and school purposes, and all state owned lands, known as public shooting areas, acquired under the provisions of Section 25.0106

SDC 1939 and acts amendatory thereto, may be taxed by the local taxing districts for county, township and school purposes in such manner as the Legislature may provide.

Minnesota's Constitution (Article 9, Section 1) authorizes municipal corporations to levy and collect assessments for local improvements upon property benefited without regard to a cash valuation of the property. In particular, the constitution provides for the assessment of public property, particularly state lands, for benefits received from the construction of trunk highways.

The constitutions of the states of Alaska, Delaware, Florida, Georgia, Illinois, Indiana, Ohio, Pennsylvania, and West Virginia state that public properties may be exempt from taxation. In these states, the legislatures have the power to require the collection of taxes on certain types of public properties. An example of a state constitutional provision in this category is Alaska (Article IX, Sections 4 and 5):

> Exemptions. The real and personal property of the State or its political subdivisions shall be exempt from taxation under conditions and exceptions which may be provided by law. All, or any portion of, property used exclusively for non-profit religious, charitable, cemetery, or educational purposes, as defined by law, shall be exempt from taxation. Other exemptions of like or different kind may be granted by general law. All valid existing exemptions shall be retained until otherwise provided by law.

The remaining state constitutions make no mention of tax exemptions for public corporations with the result that the state legislatures in these states may, or may not, provide for the exemption of public properties from taxation -- Alabama, Connecticut, Hawaii, Iowa, Maine, Maryland, Massachusetts, Michigan, Nevada, New Hampshire, New Jersey, New York, Rhode Island, Oregon, Vermont, and Wisconsin.

Taxation of Leasehold Interests

A few other states have enacted legislation to permit the taxation of leasehold interests in public properties. The Alaska Constitution (Article IX, Section 5) specifically provides for the taxation of leasehold interests:

> Sec. 5. Interests in government property. Private leaseholds, contracts, or interests in land or property owned or held by the United States, the State, or its political subdivisions, shall be taxable to the extent of the interests.

The Michigan legislature adopted Public Act No. 189 in 1953, providing for a tax on the leasehold interest of property exempt from taxation. This act included a requirement for taxing the leasehold interest of federal property. Public Act No. 189, 1953 session, as amended by Public Act No. 226, Laws of 1962, follows:

211.181 Taxation of lessees and users of tax-exempt property -- exceptions.

Section 1. When any real property which for any reason is exempt from taxation is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit, except where the use is by way of a concession in or relative to the use of a public airport, park, market, fair ground, or similar property which is available to the use of the general public, the lessees or users thereof shall be subject to taxation in the same amount and to the same extent as though the lessee or user were the owner of such property. The foregoing shall not apply to federal property for which payments are made in lieu of taxes in amounts equivalent to taxes which might otherwise be lawfully assessed or property of any state-supported educational institution nor to any surplus highway property located in a city of 1,000,000 or more leased prior to June 10, 1953, by the state highway commissioner or his designated agent where the original lease or its renewal did not provide for the payment of such tax by either party to the lease, and where no adjustment of the rental price for the land was made in recognition of the provisions of the act.

211.182 Assessment and collection -- action of assumpsit.

Section 2. Taxes shall be assessed to such lessees or users of real property and collected in the same manner as taxes assessed to owners of real property except that such taxes shall not become a lien against the property. When due, such taxes shall constitute a debt due from the lessee or user to the township, city, village, county county, and school district for which the taxes were were assessed and shall be recovered by direct action of assumpsit.

The United States Supreme Court in a series of cases handed down in 1958 upheld the constitutionality of the Michigan act providing for the taxation of leasehold interests in federal property. In City of Detroit v. Murray Corporation (1958), 355 U.S. 458, the court held, in part, that "...We see no essential difference so far as constitutional tax immunity is concerned between taxing a person for using property he possesses and taxing him for possessing property he uses when in both instances he uses the property for his own private ends..." The court made this distinction even though the law does not specifically provide that the person or lessee in possession of the property is "taxed for the privilege of using or possessing" the property.

The Supreme Court also held that:

> There is no claim that the challenged taxes discriminate against persons holding government property. To the contrary the tax is a general tax which applies and has been applied throughout the State. If anything the economic burden on the United States is more remote and less certain than in other cases where this Court has upheld taxes on private parties. Of course the Government will eventually feel the financial burden of at least some of the tax but the one principle in this area which has heretofore been clearly settled is that the imposition of an increased financial burden on the government does not by itself invalidate a state tax. ... state law specifically authorizes assessment against the person in possession. And the taxing authorities were careful not to attempt to tax the Government's interest in the property.

In general, the U.S. Supreme Court has taken the position that a state may tax the private use of public proerty as long as the state is careful not to tax the government's interest in the property.

On the basis of this decision, perhaps it would be feasible for the Colorado General Assembly to levy an entirely new tax on the use of public property. As previously mentioned, the Colorado Supreme Court held that the only condition for the exemption of state, county, and municipal lands from taxation is ownership. However, this decision is based on taxation of property and not on a concept of a tax on "use." Of course, a question remains as to whether the court would hold that a tax on "use" is a mere subterfuge and actually is an attempt to tax the property of the state, county, or towns. This latter argument may, however, be minimized by the recent decisions of the U.S. Supreme Court.

Proposed Constitutional Amendment for Colorado

A proposed Constitutional amendment was introduced in the

Colorado House of Representatives during the 1964 session to permit the General Assembly to levy fees in lieu of taxes on state and local government properties. The resolution (H.C.R. No. 1011) was adopted by the House and subsequently amended by the Senate. However, the amended resolution did not receive the necessary two-thirds vote of all members of the House. The vote in the House on final passage of the resolution was 41 ayes and 20 noes, with four absent members.

A copy of the proposed amendment to Article X, Section 4, Colorado Constitution, as outlined in H.C.R. No. 1011 follows:

Section 4. Public property exempt - except.

> The property, real and personal, of the state, counties, cities, towns, and other municipal AND QUASI-MUNICIPAL corporations, and public libraries shall be exempt from taxation, PROVIDED, THAT THE GENERAL ASSEMBLY MAY PROVIDE BY LAW FOR THE MAKING OF PAYMENTS IN LIEU OF TAXES WITH RESPECT TO ANY SUCH PROPERTY.

Public Hearing. A public hearing was held on July 26, 1965, by the Committee on Tax Exempt Property to review the merits of the present property tax exemption for public property, as well as to consider pros and cons of amending Section 4 of Article X. The committee hearing on tax exemptions for public properties revolved around three basic questions:

1) Should activities of government competing with private industry support the property tax base of other units of government in the taxing jurisdiction? In other words, should a municipal electric power company competing with private power companies pay property taxes to schools and counties in the same manner required of the private power company?

2) Should a governmental unit owning property in another taxing jurisdiction pay property taxes to the taxing jurisdiction in which the property is located? In such instances, is the payment of a property tax by a governmental unit to another governmental unit justified because of the erosion of the property tax base of the taxing jurisdiction? For example, if a city attempts to provide recreational services for its citizens and removes a large tract of land from the tax base of a small rural county, should the city contribute to the tax base of the county to compensate for loss in revenues?

3) In the event governmental property is leased to private industry, should a tax be levied against the leasehold interest? Since utilization of public property derives a profit to a private lessee, should this interest in the use of public property be taxed in a manner similar to that if the lessee actually were the owner of the property?

Arguments Supporting Taxation of Certain Public Properties. At the public hearing on July 26 a number of suggestions were made with respect to the taxation of public property.

1) It was pointed out that the present trends call for continued expansion of quasi-public functions or activies that no longer are purely governmental in nature; for instance, a sizeable number of municipalities maintain their own electric power services. Recently, a bond issue providing for airport facilities and a training center for air lines personnel was instituted in Denver. Services of fire, police, sewage, etc., must be provided to all of these facilities.

2) Large federal land holdings in Colorado limit the tax base of many rural counties, suggesting that further loss of taxable property in these areas through the acquisition of tax exempt property magnifies the burden of individual exemptions. Acquisition of lands to obtain water rights for cities, for example, erodes the tax base of a number of rural counties. Mr. Frank Steljes, Park County Assessor, pointed out that approximately 60 per cent of the land in Park County is tax exempt. The Denver Water Board has acquired a total of 18,000 acres of land in this county, while the Colorado Springs Water Department owns approximately 317 acres in the county.

3) The committee also was urged to consider that the burden of support for the erosion of the tax base of a county through the acquisition of properties by cities located outside the county should be borne by the recipients of the benefits and not the property owners of communities in which the property is acquired for governmental programs. The demand of metroplitan communities for recreational facilities, water, etc., in rural areas of the state is in conflict with interests of rural property owners. If taxable land utilized for ranch purposes is purchased by a governmental agency for recreation, the land is removed from the tax rolls. Although the tax base of the county decreases as a result of the tax exemption, local services and governmental expenses often do not decrease in proportion to the reduction in the tax base, suggesting the need for payments in lieu of taxes on property removed from the tax rolls. In other words, the community acquiring the property benefits from the tax exemption, but in so doing, a burden is placed on the existing community to maintain police, fire, and other services for the exempt property.

4) The tax exempt status for public property used for so-called proprietary purposes such as electric power, transportation, property leased for private or commercial use, etc., places similar activities of private industry under a serious economic disadvantage. Tax exemptions for quasi-governmental functions therefore should be curtailed.

5) Is there a real distinction between "use" of property and "use coupled with ownership?" In the event a commercial enterprise derives a profit through the use of public property, a tax exemption on the property or the use of the property would appear

to provide a tax advantage to this particular industry. The U.S. Supreme Court recognizes and upholds this concept that a tax on the use of public property levied against the lessee of the property and not the public owners is reasonable and proper.

Arguments in Opposition to a Proposed Constitutional Amendment. Arguments presented in opposition to a proposed constitutional amendment to allow the taxing of certain types of property used in governmental activities include: [1]

1) A tax levied on one governmental unit by another simply results in a shift of public funds between governmental units, adding to the general expense of governmental operations. In the long run, the public bears the burden of these unnecessary administrative costs.

2) Public recreation sites owned by a governmental unit and located in an adjoining county may provide recreational assets not only to the residents of the county owning the property but to the residents of the county in which the property is located. Furthermore, such a recreational site may stimulate tourist activities in the area, actually enhancing the economy of the community in which the site is located.

3) The cost of local governmental services required by a tax exempt piece of property may be rather minute in comparison with the amount of tax money that could be collected from taxes levied on the property, suggesting that, if a tax were paid on the property, non-residents would be supporting the local program to a larger degree than could be justified.

4) A reduction of revenues to a community as a result of increased tax exemptions may be compensated for by collection of monies from other sources. State aid or alternative taxes may be utilized to reduce the impact to counties in which a reduction of the property tax base has occurred.

5) Tax exemptions simply magnify problems presented by uneconomical taxing units. Consideration may need to be given to the basic organizational structure of local government to insure that sufficient tax base exists for the support of local services.

EDUCATIONAL, CHARITABLE, AND RELIGIOUS TAX EXEMPT PROPERTY

A substantial difference exists between Colorado's constitutional provision exempting public properties and the provision exempting private real properties. Whereas the exemption for governmental property is mandatory, the exemption for educational, religious, and charitable property is conditioned upon legislative considerations. For instance, Article X, Section 5, Colorado Con-

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1. "Minutes of Meeting, July 26, 1965," Committee on Tax Exempt Property, Colorado Legislative Council.

stitution provides:

> Property, real and personal, that is used solely and exclusively for religious worship, for schools or for strictly charitable purposes, also cemeteries not used or held for private or corporate profit, shall be exempt from taxation, unless otherwise provided by general law. (emphasis added)

Article X, Section 5, of the Constitution relating to tax exempt property for religious, school and charitable purposes, has been amended only once since the turn of the century. In 1936, a provision was added to permit an exemption from ad valorem taxation of personal property utilized by religious, charitable, and educational institutions. As previously mentioned, the General Assembly has the power to limit exemptions in these areas; however, the General Assembly may not extend tax exemptions to property utilized for other purposes.

Statutory Provisions

The statutory language relating to educational, religious, and charitable exemptions also has changed little over the years. Section 2571, Compiled Statutes of Colorado 1883, provides: "... fourth, lots with the buildings thereon, if said buildings are used solely and exclusively for religious worship, for schools, or for strictly charitable purposes;..." This section was rewritten in 1902 with nearly identical language, and in 1921 the law was amended to limit the exemption for schools to those not operating for private or corporate profit (Laws of 1921, page 687). A definition of what constitutes a school also was added in 1933. The most significant change in the language of the statutes applying to private tax exempt property occurred in 1964 (Chapter 94, Laws of 1964); ownership was added as a criterion for obtaining an exemption from ad valorem taxes. Under this new provision the commission denied an exemption for a church used solely and exclusively for religious worship, because the property was owned by a real estate developer. Despite these aforementioned changes, the basic terminology of the ad valorem exempt statute as it relates to private and charitable properties, utilizing the words solely and exclusively, has remained the same throughout Colorado's history.

Since the basic terminology of the law as it relates to private exemptions has been amended only slightly, the courts have concluded this to mean that the General Assembly approves the Supreme Court's liberal rule of construction. In this sense, it could be argued that exemptions are granted and denied on the basis of judicial determination rather than legislative determination.

Duties of Tax Commission

Chapter 94, Laws of Colorado 1964, requires the Colorado Tax Commission to examine and review applications claiming exemption of real and personal property owned and used solely and exclusively for religious worship, schools, and charitable purposes. If the exemption requested is justified in accordance with law, the commission must grant the same. Assessors are prohibited from granting exemptions in these areas. However, assessors are responsible for the partial exemptions for parsonages (a maximum of $6,000 of the valuation for assessment) and public property -- Article X, Section 4.

Procedure. An individual or corporation may file a claim for exemption of ad valorem taxes on one of three forms provided by the commission -- 1) religious, 2) charitable, or 3) educational. These application forms are designed to inform the commission of the owner, address, legal description, use, and related financial statements concerning the property for which an exemption is claimed. Upon receipt of a claim for exempt status, the commission conducts an investigation to substantiate the information contained in the application. In other words, the commission must have actual proof that the property is used for school, religious, or charitable purposes. Following the investigation of the claim, the commission may rule on the taxable status of the property or simply request a hearing with the claimant to develop additional information. In some instances following an adverse ruling, the claimant or other interested party may petition for a redetermination and request a hearing before the commission. Appeal of any decision of the commission is made to the district court.

Claims for Exemptions. Since 1962, 1191 claims for ad valorem exemption have been filed with the commission. A brief summary of action taken on these claims follows:

	1962	1963	1964	1965
Number of Claims Filed	340	264	303	284
Number of Claims Allowed*	146	181	218	200
Number of Claims Denied	49	48	58	57
Number of Claims No Action Taken	20	15	15	5
Number of Claims in Process of Investigation	125	20	12	22

* Includes partial exemptions.

The three classes of property for which the tax commission is responsible -- religious, charitable, and educational -- may be subdivided into specific categories for purposes of determining the types of exemptions granted and denied by the commission. In other words, all property owned by a religious organization does not automatically qualify for an exemption. The property must be utilized solely and exclusively for religious worship. Therefore, the commission reviews each individual claim to determine whether it merits an exemption under the law.

Table I lists individual classes of property according to use for all claims filed with the commission. Many of these claims, once the use has been substantiated, obviously meet the requirements of Section 137-2-1, 1965 Permanent Cumulative Supplement to C.R.S. 1963, relating to exemptions from ad valorem taxes. For instance, a church building utilized solely for religious worship certainly qualifies for an exemption; similarly, institutions such as the Red Cross and Salvation Army also appear to meet the conditions of being used solely and exclusively for charitable purposes. However, in many instances the qualifying use of the property is not clear, and the Tax Commission has turned to Colorado court decisions, cases in other states, and opinions of the Attorney General in arriving at its decision.

Table I

AD VALOREM TAX EXEMPTION CLAIMS GRANTED AND DENIED
BY TAX COMMISSION 1962 - 1965

Category	Use of Property	Exempt Status Granted	Denied
Religious			
	Religious Worship -- Churches, etc.	X	
	Instruction -- Sunday Schools	X	
	Churches -- Under Construction	X	
	Church Sites -- Vacant Land		X
	Church Parking Lot -- Religious Only	X	
	Church Parking Lot -- Used Commercial Purposes Weekdays		X
	Miscellaneous Religious Activities		
	Summer Camps	X	
	Convents	X	
	Retreats	X	
	Printing Operations	X	
	Student Centers (College, etc.)	X	
	Housing for Lay Teachers of Church Schools	X	
	State Headquarters	X	
	Custodian Lives Rent Free	X	
	Church Playgrounds	X	
	Partial Religious Use		
	State Headquarters		X
	Summer Cottage		X
	Residences of Secretaries, Lay Assistants, Caretaker (Pays Rent)		X
	Dormitory of Bible Students		X
	Vacant Building -- Church Owned		X
	Income Property of Churches		X
	Property Used for Religious Purpose but not Owned by Church Organization		X
	Religious Camps not for the Benefit of Colorado Residents		X
Educational			
	College Summer Camps - Nonresident		X
	Private High and Grammar Schools (Nonprofit)	X	
	Judo Club	X	
	American Institute Banking (Banking Courses)	X	
	Museums	X	
	Saddle Clubs		
	Westernaires (Museum)	X	
	Recreational		X
	Placement Center for Private University		X
	Theater for Nonprofit Theatrical Group		X
	Playgrounds	X	

Table I
(Continued)

Category	Use of Property	Exempt Status Granted	Exempt Status Denied
Charitable			
	Fraternal Organizations -- Masons, Elks, etc.	X	
	Parking Lots	X	
	Income Property		X
	Vacant Property		X
	Used but not Owned by Lodge		X
	Y.M.C.A. and Y.W.C.A.	X	
	Social Clubs		X
	Professional Organizations		X
	Veterans' Organizations	X	
	Women's Club	X	
	Political Club		X
	Hospitals	X	
	Staff Residences for Hospitals	X	
	Red Cross, Salvation Army, etc.	X	
	Planned Parenthood	X	
	Residence of Volunteer Social Workers	X	
	Community Centers	X	
	Charitable Foundation	X	
	Summer Camps -- Nonprofit	X	
	Used for Charitable Purposes -- Not Owned		X
	Residence Donated -- Former Owner Still Resides		X
	Vacant Land		X
	Unoccupied Building		X
	Senior Citizens' Housing	X	
	Foreign Charities, etc. (Not for Benefit of Colorado Residents)		X
	Humane Association		X
	Community Clubs		X

Review of Exempt Properties Granted Prior to 1962

Subsection 4 of Section 137-3-18, 1965 Permament Cumulative Supplement to C.R.S. 1963, requires the commission to annually review the status of all property exempted from ad valorem taxes for religious, school, and charitable purposes and to ascertain whether an exemption continues to be justified on individual properties. To meet this mandate of the General Assembly, the Tax Commission has employed Frank Eggers, an exemption officer, to compile a listing of all private religious, charitable, and school properties in Cololorado. The commission expects to complete this survey in about three years.

The Council staff's initial survey on tax exempt property revealed that the exempt property records of the assessors were inadequate in all but a few instances. The listings of properties obtained from the assessors in the Council study were turned over to Mr. Eggers, and he is using this information as a starting point in developing information in each county. Eventually, a listing of exempt property in each county will enable the assessors to develop detailed maps of all property in the county showing taxable as well as exempt properties.

In the meantime, the Tax Commission has issued a number of circulars to county assessors to expedite review of exemptions of a questionable nature. As early as 1961, prior to the time the commission was assigned responsiblility for review of applications for ad valorem tax exemptions, the commission issued Circular Number 2, 1961 Series, pointing out:

> ...The assessor in his official capacity is the authority in the determination of whether any particular property is exempt under our existing laws; if he has any reasonable doubt in the matter, the property should be properly assessed and left in the roll until removed by court action instigated by the taxpayer.

Chapter 260, Laws of 1961, required the Tax Commission to examine periodically all property in this state which has been exempted from taxation; to review applications for all new exemptions; and to report to the assessors in writing their decisions. Circular Number 1, Series of 1962, issued by the commission called the assessors' attention to "...2) certain properties may have been exempted as being religious, charitable, or school, contrary to the opinion of the Assessor. He can and should request that exempt status of such property be established by the Tax Commission..." Similar circulars have been issued in 1963, 1964, 1965, and 1966. In addition, in discussions with the assessors, the commission has repeatedly urged assessors to require owners of exempt property (in which there is a question of justification for an exemption) to file for a redetermination of the exempt status of the property.

In some instances, the assessors have followed up on this request and have required exempt organizations to submit applications to the commission.

Although the commsssion is authorized to examine individual tax exemptions in the counties, the commission has elected to approach the problem through an over-all survey of the entire property exemptions in the county rather than pick on individual situations. As the exempt property survey is completed in each county, the commission will make a redetermination of properties within the counties.

Review of Selected Areas of Exemption Granted and Denied By the Tax Commission

Senior Citizen Homes. In 1962, Congress enacted the Senior Citizens Housing Act (Public Law 87-723). The purpose of the act is to assist private nonprofit corporations, consumer cooperatives, or public bodies or agencies to provide housing and related facilities for elderly or handicapped families. Following enactment of Public Law 87-723, a number of charitable, religious, and trade associations negotiated agreements for the construction of apartment houses for the elderly in the urban areas of Colorado. To finance the institutions, recipients usually are charged a minimum rental, as well as an occupancy fee ($600 - $15,000). The growth in nonprofit senior citizen housing in Colorado in the past few years has been substantial, and total fixed assets of these homes are worth at least $25,000,000.

Taxable Status. The Colorado Tax Commission has ruled that nonprofit housing for the elderly may qualify for an ad valorem tax exemption. However, the question has not been resolved since litigation is underway in Jefferson County. A basic question exists as to whether the residences actually are charitable, especially in view of occupancy fees and monthly rental charges.

In any event, a brief outline of what constitutes a charity may reveal the broad scope of charitable exemptions granted in Colorado and other states.

In Bishop and Chapter v. Treasurer, 37 Colo. 378, the Colorado Supreme Court listed a number of opinions from other jurisdictions defining what constitutes a "charity" or a "charitable purpose." In particular, the court includes remarks by Justice Marshall in Harrington v. Pier, 82 N.W. 345:

> A general statement of the essentials of a charity; as regards the character of the work to be performed, will substantially solve the question. It includes everything that is within the

letter and spirit of the statute of Elizabeth,[2] considering such spirit to be broad enough to include whatever will promote, in a legitimate way, the comfort, happiness and improvement of an indefinite number of persons. To that extent, such statute is generally held to be a part of the common law of states even that reject all the other features of it. * * * The general scope of the statue, considering its letter and spirit, as before indicated, has been judicially stated by judges of great learning, whose statements have come to be referred to generally in judicial opinions as the true test rather than the statute itself. The most familiar judicial statement of the law, as recognized by the courts, is known as Gray's rule, and is found in Jackson v. Phillips, 14 Allen 539, where the bequest under consideration was for the benefit of fugitive slaves, an object quite remote from any specifically mentioned in the English statute. It was held, nevertheless, to be within the spirit of the statute. After discussing various views of the term 'charity,' as applied to charitable trusts, Justice Gray said: 'A charity, in the legal sense, may be more fully defined as a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government. It is immaterial whether the purpose is called charitable in the gift itself, if it is so described as to show that it is charitable in its nature.' Another definition often quoted was given by Mr. Binney in the Girard Will Case, 2 How. 127, 11 L. Ed. 205. It is as follows: 'Whatever is given for the love of God or for the love of your neighbor in the catholic and universal sense--given from these motives and to these ends--free from the stain or taint of every consideration that is personal, private or selfish.' Perhaps a more concise, comprehensive and practical definition is that found in Missouri Historical Soc. v. Academy of Science, 94 Mo. 459, 8 S.W. 346, as follows: 'Any gift, not inconsistent with existing laws, which is promotive of science

or tends to the education, enlightenment, benefit or amelioration of the condition of mankind, or the diffusion of useful knowledge, or is for the public convenience, is a charity within the meaning of the authorities, whether so denominated in the instrument which evidences the gift or not.' Another rule, capable of being understood and applied by any person of ordinary understanding, was given by Lord Camden in Jones v. Williams, Amb. 652, and approved by the Supreme Court of the United States in Perin v. Carey 24 How. 465, 16 L. Ed. 701, as follows: 'A gift to a general public use, which extends to the poor as well as the rich.' The theory of that is, that the immediate persons benefited may be of a particular class, and yet, if the use is public in the sense that it promotes the general welfare in some way, it has the essentials of a charity." (Emphasis added)

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2. The ancient statute of Elizabeth. The preamble to the ancient statute of Elizabeth (r), sometimes known as the Charitable Uses Act, 1601, contained a comprehensive and varied list of charities (s) and the statute made it clear that at least those purposes were charitable (t).

The objects enumerated in the preamble (u) were as follows: --The relief of aged, impotent and poor people: the maintenance of sick and maimed soldiers and mariners, schools of learning and free schools and scholars of universities; the repair of bridges, ports, havens, causeways, churches, sea banks and highways; the education and preferment of orphans; the relief, stock or maintenance for houses of correction; marriages of poor maids; supportation, aid, and help of young tradesmen, handicraftsmen, and persons decayed; the relief or redemption of prisoners or captives; the aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers, and other taxes.

The list was not exhaustive (a); but to decide whether a purpose is charitable or not in English law, it has since been the practice of the courts to refer to the preamble to the ancient statute of Elizabeth (b). The objects there enumerated and all others "which by analogies are deemed within its spirit and intendment" are charitable in the legal sense (c). No other objects are in English law charitable. Those named in the preamble, which has received a very wide construction, are to be regarded as instances, and not as the only objects of charity. The preamble to the statute of Elizabeth has been expressly preserved although the rest of the statute has been repealed.

General statements concerning charitable purposes also are outlined in Corpus Juris Secundum, 84 C.J.S. 544:

> ...Charitable purposes include those the accomplishment of which makes it likely that persons affected will become substantial and useful citizens and less likely that they will become burdens on society. Social and recreational activities of a club do not constitute a charitable purpose;
>
> ...purposes purely charitable is broader than mere relief of the destitute or the giving of alms; it contemplates activities not self-supporting which are intended to improve the physical, mental, and moral condition of the recipients and make it less likely that they will become burdens on society and more likely that they will become useful citizens.
>
> ...In order to be exempt as charitable and benevolent, an institution should be operated without any element of private profit, and must not be a money-making institution. This does not mean that a charitable institution cannot charge fees or engage in business,...

According to Black's Law Dictionary, charity also may mean or apply to:

> Accomplishment of some social interest, In re Tollinger's Estate, 349 Pa. 393, 37 A.2d 500, 501, 502. Act or feeling of benevolence, Southern Methodist Hospital and Sanatorium of Tucson v. Wilson, 51 Ariz. 424, 77 P.2d 458. Advancement of purposes beneficial to public, Rabinowitz v. Wollman, 174 Md. 6, 197 A. 566, 568. All good affections men ought to bear towards each other. Morice v. Bishop of Durham, 9 Ves. 399. All which aids man and seeks to improve his condition. Waddell v. Young Women's Christian Ass'n, 133 Ohio St. 601, 15 N.E.2d 140, 142. Alms giving, In Re Rathbone's Estate, 11 N.Y.S.2d 506, 527, 170 Misc. 1030. Amelioration of persons in unfortunate circumstances, Second Nat. Bank v. Second Nat. Bank, 171 Md. 547, 190 A.215, 111 A.L.R. 711. Any purpose in which the public has an interest, Collins v. Lyon, Inc., 181 Va. 230, 24 S.E.2d 572, 580. Any purpose of general benefit untainted by motives of private gain. Stearns v. Association of Bar of City of New York, 276 N.Y.S. 390, 395, 154 Misc. 71. Any scheme or effort to better the condition of society or any considerable part thereof. Tharpe v. Central Georgia Council of Boy Scouts of America, 185 Ga. 810, 196 S.E. 762, 764, 116 A.L.R 373

185 Ga. 810, 196 S.E. 762, 764, 116 A.L.R. 373. Benefit of an indefinite number of persons, Morgan v. National Trust Bank of Charleston, 331 Ill. 182, 162 N.E. 888, 890. Benefit of minister. In re Edge's Estate, 288 N.Y.S. 437, 440, 159 Misc. 505. Benevolence, philanthropy, and good will. Santa Fe Lodge No. 460, B. P. O. E., v. Employment Sec. Commission, 49 N.M. 149, 159 P.2d 312, 315. Benevolent or philanthropic, Beckwith v. Parish, 69 Ga. 569; Price v. Maxwell, 28 Pa. 23. General Public use which extends to the rich as well as to the poor. Hamilton v. Corvallis General Hospital Ass'n, 146 Or. 168, 30 P.2d 9, 14. Gift without consideration or expectation of return, State v. Texas Mut. Life Ins. Co. of Texas, Tex.Civ.App., 51 S.W.2d 405, 410. Improvement of spiritual, mental, social and physical conditions. Andrews v. Young Men's Christian Ass'n of Des Moines, 226 Iowa 374, 284 N.W. 186, 192. Lessening burdens of government. Stork v. Schmidt, 129 Neb. 311, 261 N.W. 552, 554. Physical, mental or moral betterment. In re Tollinger's Estate, 349 Pa. 393, 37 A.2d 500, 501, 502. Promotion of happiness of man. Old Colony Trust Co. v. Welch, D.C.Mass., 25 F.Supp. 45, 48. Promotion of philanthropic and humanitarian purposes. Jackson v. Phillips, 14 Allen, Mass., 556. Promotion of well-doing and well-being of social man. Krause v. Peoria Housing Authority, 370 Ill. 356, 19 N.E.2d 193, 199. Public benefit, convenience, utility, or comfort, Camp v. Presbyterian Soc. of Sackets Harbor, 173 N.Y.S. 581, 584, 105 Misc. 139. Reclamation of criminals. Religious, educational, benevolent, and humanitarian objects. In re Jordan's Estate, 329 Pa. 427, 197 A. 150. What is done out of good will and a desire to add to the improvement of moral, mental, and physical welfare of public. Old Colony Trust Co. v. Welch, D.C.Mass., 25 F.Supp. 45, 48. Whatever is given for love of God or love of your neighbor, free from every consideration that is personal, private, or selfish. Vidal v. Girard, 2 How. 128, 11 L.Ed. 205, appr. Price v. Maxwell, 28 Pa. 35. Whatever proceeds from sense of moral duty or feeling of kindness and humanity for relief or comfort of another, Doyle v. Railroad Co., 118 Mass. 195, 198, 19 Am. Rep. 431.

In summary, as pointed out in St. John the Evangelist v. the Treasurer of the City and County of Denver, 37 Colo. 378, the fact that a person pays for actual necessities, and compensation to the institution does not exceed what is required for the successful maintenance of an institution, this does not render it less a charity. Of course, the fact that an association is nonprofit also does not qualify it for an exemption.

The California District Court of Appeals ruled in Fifield Manor v. County of Los Angeles (1961) 10 Cal. Reporter 242, that nonprofit corporations were entitled to property tax exemption for property devoted to homes for the aged, although occupied mainly by middle income persons who had been self-employed, and where charges did not yield more than actual costs. The court concluded:

> The courts have long recognized and declared that charity is not limited to giving alms, is not confined to relief of the poor, may extend to the rich in areas where they are not able to care for themselves, and extends to those social objectives which promote the general welfare and would be served by the government in the absence of philanthropic enterprises such as homes for the aged. Historically, and well-nigh unanimously, the courts have found homes for the aged to be charitable institutions where conducted at cost or less. They have also recognized that man, especially the old, does not live by bread alone; that though he be able to pay for all material wants he nevertheless may be dependent upon his fellow man or the government to protect him from the haunting fear of loss of all his property with resultant poverty, fear of illness or other physical disability overtaking him with no one near to help, fear of the loneliness arising from absence of social contacts, fear of any of the tragedies of old age where there is no one standing by to help.
>
> The test is not found in the question of what financial ability does the recipient possess, but what are his needs, alleviation of which constitutes a worthy social value. We apprehend that the financial test becomes pertinent only when the occupants of an old age home pay more than the cost to the home of what it furnishes them.
>
> (1) In the light of these authorities it seems clear that a home for the aged which caters to wealthy persons and furnishes them those services and care needed by the old and infirm, rich or poor, does not cease to be a charitable institution so long as its charges do not yield more than actual cost of operation; that it does cease to have that status when the occupants pay more than the cost to the home, thus resulting in a profit and converting it into a non-charitable institution.

Attorney General's Opinions. In 1959, Donald Kelley, City Attorney for Denver, requested an opinion from the Attorney

General on the taxable status of the Campbell-Stone Memorial Residence (Memo No. 59 - 3341). Excerpts from Mr. Dunbar's reply follow:

> The Association of Christian Churches of the Denver Area, Inc., is the owner of what is known as Campbell-Stone Memorial Residence, located at 1285 Race Street, Denver. The Association formally requested the Assessor that its property, land and improvements be given tax exemption from ad valorem taxes under Sec. 137-12-3(8), C.R.S. '53 and Sec. 5, Article X of the Constitution. Such request was denied by the Assessor and the matter is currently pending before the Board of Equalization.
>
> The facts upon which request for exemption was based appear to be:-
>
> The Association has made improvements on the land which consists of a modern apartment building containing a total of sixty-five resident units varying between buffet units, one bed room units and two bed room units, together with a recreation room, sun deck and sick-bay. The same is licensed by the Department of Health and Hospitals of Denver as an Institution for the Aged. The units are leased only to physically able senior citizens, who are approved by an admissions committee, and who pay an occupancy fee of $600.00 (refundable on death or removal) and fixed monthly rentals of $48.00 for buffet units; $65.00 for one bed room apartments; and $80.00 for two bed room apartments. The tenancy is terminated upon non-payment of the agreed rental, except that the Association states that it has established a fund, arising from voluntary contributions, from which rentals due from occupants who are without funds is paid. The rentals charged are admittedly lower than the prevailing rental scale of like units.
>
> The Association has filed with the FHA, from whom a loan was obtained, a letter obligating it to assume and pay any deficit between income and operating expense arising out of the operation of said housing project.
>
> QUESTION: Under these facts does Sec. 5, Article X of the Colorado Constitution and Sec. 137-12-3(8), C.R.S. '53 exempt this property from ad valorem taxation?

ANSWER: Under the facts as outlined in your letter of October 26, and after an examination of the decisions applicable thereto it is my opinion that there is ample authority and grounds to support a judicial determination in favor of a tax exempt status under Sec. 137-12-3(3), C.R.S. 1963, and Sec. 5, Article X of the Constitution.

More detailed facts relating to the operation of the Campbell-Stone Memorial Residence, appearing in a brief submitted on the question indicates that the residence is operated as a non-profit charitable and benevolent enterprise of the Association. The Association, a Colorado corporation, was issued a corporate charter in 1946, as a religious and benevolent society or association and is not organized for profit and has no stockholders.

From Kemp v. Pillar of Fire, 94 Colo. 41, decided in 1933, we find the following:

"While the use of the property, and not the character of the owner, is the test of the right to exemption, the character of the owner sheds an important side light on the nature of the use."

In Lutheran Hospital Association v. Baker (1918), 40 S.D. 226, 167 N.W. 148, it was said:

"The determination of the exemption in a particular case seems to depend in the last analysis, upon two things

First, whether the organization claiming the exemption is a charitable one; and, second, whether the property on which the exemption is claimed is being devoted to charitable purposes. In general, it may be said that any body not organized for profit, which has for its purpose the promotion of the general welfare of the public, extending its benefits without discrimination as to race, color or creed, is a charitable or benevolent organization within the meaning of the tax exemption statutes."

We note further that "the courts are agreed that a charitable institution does not lose its charitable character and its consequent exemption from taxation merely because recipients of its benefits who are able to pay are required to do so, where funds derived in this manner are devoted to the charitable purpose of the institution." Hot Springs School Dist. vs. Sisters of Mercy (1907), 84 Ark. 497, 106 S.W. 954.

From the case The Bishop and Chapter of the Cathedral of St. John the Evangelist v. The Treasurer of the City and County of Denver, 37 Colo. 378, 86 Pac. 1021, we have the following:

"The only question, therefore, presented for our consideration is, whether the exaction of payment from the patients for the actual necessities furnished, according to their circumstances and the accommodations they receive, constituted a use of the buildings other than a strictly charitable one. We think that it has been uniformly held that, when such compensation does not exceed what is required for the successful maintenance of the institution, it does not render it less a charity."

The "Home" requires that its tenants pay only a portion of their keep if they are financially able, and if they are not able to pay, money is received from member churches as donations to carry on the work of the home and to pay for those who are unable to pay.

From the alleged facts submitted in your letter it appears that the residents of Campbell-Stone Memorial Residence, are all and may have been for many years, residents of the State of Colorado.

The "residence" meets the requirements for tax exemption in the following respects:-

(1) A Colorado corporation organized as a religious and benevolent non-profit enterprise, whose membership consists of the Association of Christian Churches of Denver.

(2) Furnishes a home for senior citizens, at less expense to the resident of the home than could be purchased elsewhere, any deficit being made up from donations and contributions from member churches.

(3) Result: The Campbell-Stone Memorial Residence by its operation and care of senior citizens is thereby relieving the taxpayers of Colorado of the expense of caring for those elder citizens who otherwise might sooner or later become a charge upon the State for their care and support.

The Attorney General issued a similar opinion in December of 1960 -- 60-3464:

Rocky Mountain Methodist Homes, Incorporated is a not for profit Colorado corporation and owns certain real estate in Boulder County and has constructed improvements, thereon at a cost, including cost of furnishings, of about $1,920,000.00. The Boulder County Assessor proposes to assess the improvements and land. The corporation claims that this assessment is erroneous since the lands and improvements are exempt from taxation under the provisions of Section 5, Article X of the Colorado Constitution and Section 137-12-3, 1953 C.R.S.

The property is operated under the name Frasier Meadows Manor. The home is operated as a home for elderly persons and is a project of The Rocky Mountain Conference of the Methodist Church, which Conference is the governing body of the church for the States of Colorado, Wyoming and Utah. The charter provides that the home is to be a home for members or ministers of the Methodist Church and for older persons of good moral character...

For those who have sufficient funds a contribution is made depending upon the accomodations desired. The accommodations vary from a single unit at $8,000 to $18,000 for an apartment facing the mountains. For this payment the accommodations are available for life. The units are leased only to physically able senior citizens. The monthly care and food charge is $125.00 per month. The corporation agrees to care for a person on basis of old age assistance should funds become exhausted. The corporation also provides for special occupancy cases where people do not have sufficient funds to pay the $8,000. These contributions have varied from $25.00 to $1500. Seven persons have been admitted as special occupancy cases and the total contribution for the seven is $4,525 or an average of approximately $650.00 each.

There is no fixed rule by which it can be determined whether an organization is a charitable one. Each case must turn on its particular facts.

It appears that Frasier Meadows and Campbell-Stone are similar in organization and purpose with the exception that Frasier Meadows requires a much larger occupancy fee ($8,000 - $18,000) than Campbell-Stone ($600.00). Frasier Meadows charges $125 per month for the room, heat, light, water, board, periodic room service and flat

laundry service. Campbell-Stone makes a fixed monthly rental of $48.00 - $80.00 with no provision for board.

It is my opinion that there is sufficient similarity in the Frasier Meadows home compared to the Campbell-Stone home to justify a judicial determination in favor of a tax exempt status under Sec. 137-12-3(8), C.R.S. 1953, and Sec. 5, Article X of the Constitution.

In a letter to the Attorney General in January of 1963, Howard Latting, chairman of the Tax Commission, also outlined problems posed by senior citizen homes.

As you are undoubtedly aware, Congress authorized F. H. A. financing of Senior Citizen Homes, provided they were sponsored by certain types of non-profit organizations.

In Colorado, such homes have been and are in the process of being sponsored by churches, church organizations, hospital associations, and labor unions. Inasmuch as F. H. A. does not provide one-hundred per cent financing, second mortgages are necessary. If a Senior Citizen wishes to avail himself, or herself, of one of these apartments, he or she must pay an entrance fee, plus a monthly rental.

The entrance fees will vary from $600 to $7,500 generally, and the monthly rental will vary from $60 per month to $135 per month generally. The entrance fee is geared primarily to service the second mortgage, and the monthly rentals are established after approval by F. H. A. to service the F. H. A. loan. Thus, it would appear, that the amount of money necessary to provide Senior Citizen housing is provided by the Senior Citizens themselves, and NOT by the sponsoring organization; in other words, they are self-sustaining.

At the present time, we are in receipt of three separate applications for tax exemption under C. R. S. 1953, 137-12-3(8) filed with us for determination of eligibility under 137-3-5-9(2):

1. Association of Christian Churches (Campbell-Stone)
2. Broadway Baptist Housing, Incorporated (Roger-Williams Manor)
3. Central Housing, Incorporated (Cane-Ridge Manor)

There is no doubt in our mind that such projects are commendable, however, there is some doubt as to their eligibility for exemption under strict interpretation of applicable statutes. Also, because this is a new concept, there is some question as to whether or not the matter should be determined by litigation, rather than by administrative decision.

In answer to Mr. Latting, the Attorney General stated:

> We have examined the papers submitted by the Broadway Baptist Housing, Incorporated (Roger-Williams Manor), Central Housing, incorporated (Cane-Ridge Manor), and Presbyterian Hospital Association (Park Manor), respecting their claims for tax exemption under 137-12-3(8) CRS '53 as amended, and we do not see where these organizations and their operations differ in principle from the Association of Christian Churches of the Denver Area, Inc., which operates Campbell-Stone, which was the subject of our Opinion No. 59-3341 which you have, or Frasier Meadows Manor owned by Rocky Mountain Methodist Homes, Inc., which was the subject of our Opinion No. 60-3464 which you also have. We have also read the case of Fifield Manor, and others, v. the County of Los Angeles decided by the District Court of Appeal of the Second District of California on January 3, 1961 as modified on January 31, 1961. From this case and the other cases which we cited in our Opinions No. 59-4331, 59-3346, and 60-3464 it is still our opinion that there is ample authority to justify you in determining that all of the above institutions are exempt from ad valorem taxes under Section 137-12-3(8) CRS '53 as amended.

Based on opinions of the Attorney General and Court decisions in Colorado and other states, the commission has approved the concept of an ad valorem tax exemption for nonprofit senior citizen homes.

Churches Under Construction

In viewing the records of the Tax Commission, a number of religious organizations have filed for exemption of church buildings under construction. If the investigation of the property by the commission, staff, or county assessor reveals that a church actually is under construction the exemption is granted. The commission's decision is based on Supreme Court cases utilizing a "liberal rule" of interpretation of Article X, Section 5, of the Colorado Constitution and the relative statutes. It is interesting to note, however, that Supreme Court members have disagreed over the application of the so-called "liberal rule" of construction.

The depression of the 1930's apparently was an important factor in bringing this problem to the attention of the court as well as being a factor in the liberal decisions of the court. The issue of a tax exemption for churches under construction came before the courts because there were lengthy periods during the depression in which churches lacked finances to complete their building activities.

For instance, in El Jebel Shrine Association v. McGlone (1933), 93 C.334, the court stated:

> ...a sufficient answer is that at the cost of about $50,000 a cellar has been excavated upon their premises and stone walls thereon erected upon which the super-structure of a building will be erected as soon as business conditions permit. Counsel for the county treasurer evidently construes our constitutional and statutory provisions in question as requiring a building to be entirely completed before the same can escape taxation. There are a number of decisions in other jurisdictions to the contrary. A structure is a building under the arson statute, although it is yet incomplete and unfinished. Commonwealth v. Squire, 42 Mass. (1 Metc.), 258, 259. In Scott v. Goldinghorst, 123 Ind. 268, 24 N.E. 333, the word "building" under the mechanic's lien law does not mean a completed building... It would seem therefore, that the foundation which the shrine association has made, or caused to be made, upon these premises is a building, at least a part of building. ...In New England Hosp. v. Boston, 113 Mass. 518,... The court in that case said that inasmuch as this admittedly charitable institution had purchased the lots for the purpose of erecting the building thereon, and was proceeding with the preliminary measures necessary for its erection, the land must be deemed to be occupied for the charitable purposes for which the hospital was incorporated and was therefore exempt...

In the Shrine case, the court upheld the premise that an unfinished structure is in fact a building and entitled to exemption.

This liberal construction was carried one step further in a majority opinion of the Supreme Court in McGlone v. First Baptist Church (1935), 97 Colo. 427. A religious organization razed a residence and garages for the purpose of construction of a church. At the time of assessment the land had been cleared and was vacant, but actual construction had not commenced. However, the court held that clearing of the land was sufficient evidence of intent to build a church and granted the exemption. Excerpts from the majority opinion of the court follow:

> ...In a recent case this court said: "The courts of some of the states interpret such provisions strictly and others liberally. Our own decisions unquestionably are liberal*** The argument of counsel for the defendants in error, which, in substance, is a plea for the adoption by this court of the strict rule of construction, which if approved, would be contrary to our previous decisions on this important subject, does not meet with our approval,..."
>
> ...The statute with reference to exemptions is practically in the same words as the constitutional provision. It has not been materially changed over a course of many years, from which fact it seems logical to conclude that the people of the state have approved the liberal rule of construction adopted by the courts; otherwise they would have taken action through the legislature to further limit the conditions under which property of religious, charitable and educational institutions may be exempt.
>
> ...Based on the El Jebel Association v. McGlone, Supra, in which the court held that a foundation was sufficient to qualify as a building, the majority opinion stated: "There was no contention in that case, and could be none in reason that the foundation, which is all there was on the lot, was used for strictly charitable purposes. Indeed there was no contention that it was used at all." The rule of construction that we applied in the Shrine case was substantially this: When an admittedly charitable institution undertakes in good faith to extend its land and facilities for charitable work and evidences this fact by the expenditure of money and the doing of work as part of a program looking toward the erection of a building to be used when completed for charitable purposes, this is within the spirit of the constitutional and statutory tax exemption provisions... In effect we hold that the requirements of the constitution and statutes are met if there is

a bona fide continuing intention to construct a building to be devoted to the specified uses, evidenced by work and the expenditure of money toward that end.

In the instant case, the court contended: "It began work on the lots by removing a nineteen room house and nine or ten garages located thereon and had completed this work only five months before the assessment of which complaint was made, work that was a prerequisite to building a church and a part of the building program, just as putting in a foundation was a part of the Shrine program."

On the other hand, in a minority opinion, Justice Holland dissented. In part, he said:

...can liberal construction go so far as to bring into physical existence a building, or some part of a building on a lot, when admittedly there is none? ...The Constitution clearly says ...and does not say that the intention to construct a building to be used for religious worship exempts the real estate upon which it is to be located, from taxation. ...If there was even a doubt as to the meaning of the wording of the constitution and statute applicable to the case and it became necessary to indulge a presumption relative to the meaning of the words employed, the presumption is always in favor of the taxing power. 61 C.J. 391, Section 395.

Chief Justice Butler concurred in the dissent.

Nonresident Activities

The Tax Commission has held that the property of a geology summer camp for students of an out-of-state university must be placed on the tax rolls. Similarly, the commission has determined that property used for other religious, charitable, and education activities primarily for the benefit of nonresidents of Colorado may not qualify for a tax exemption. In The Young Life Campaign, A Corporation, v. Board of County Commissioners of Chaffee County, et al. (1956), 134 Colo. 15, the Supreme Court contended:

...It would unduly prolong this opinion to quote from other decisions which support our conclusion that it was not the intention of the people of the state of Colorado by adoption of its constitutional provision (Article X, Section 5) or by legislative act to relieve a nonprofit foreign corporation, be it charitable, religious or educational, of the payment of its general taxes and thereby increase the tax burden upon

> its resident taxpayers where, as here, said foreign corporation cannot fairly be said to ease any of the burdens of the taxpayers of the state of Colorado...
>
> ...While it is the policy of society to encourage education, benevolence and charity, we do not believe it to be a proper function of the state to go outside its own borders and devote its resources to the support of education, religion and charity for the benefit of the human race. Such would be a direct diversion of the state's resources at the expense of its resident taxpayers...
>
> We hold that a resident or nonresident, nonprofit educational, religious, and charitable corporation which is not using its property in the state for the benefit of the people of Colorado is not exempt from the payment of general taxes on property held by it within this state.

Fraternal Lodges

Although fraternal organizations organized for charitable purposes are eligible for exempt status under rulings of the Tax Commission, the commission has excluded clubs organized for social purpose from qualifying for tax exemptions. For instance, if the by-laws of an organization emphasize charity and social activities are of secondary importance -- Elks, Masonic Lodges, etc. -- the organization may qualify for an exemption. On the other hand, if the social aspects are of utmost importance, the exempt status is denied.

Many tax exempt fraternal organizations utilize exempt facilities for various social gatherings and because of this their exempt status has been questioned. In Horton v. Colorado Springs Masonic Building Society (1918) 64, Colorado 529, the court stated:

> The fact that these societies or their members sometimes give a dinner or a dance in the reception and other rooms... in our opinion, does not change the nature of the use of the building. ...when a religious organization serves a meal or lap supper in the basement of its church, and charges for it, even for purposes of raising money to meet a deficiency in connection with its church matters, or to be used in religious work, no authority has every held that for that reason the church building was not used solely and exclusively for religious worship. The aims and objects of these societies are charitable. The moneys received from their members and otherwise,

except sufficient to perpetuate their existence, are devoted to charitable purposes;...

...The reading rooms, etc., in connection with the lodge rooms, make them all the more attractive and tend to increase the membership, which in turn gives greater opportunity to enlarge the charities performed. The dances and dinners referred to are but an incident in the social life of these societies; they are not for gain or profit, although they may, in some instances, add to the revenue and in the end help to provide more funds to be used by the societies in their charity work.

Cases holding that property used principally for the benefit only of persons in some way related to the members of a society (an artifical class as it is called) are not exempt have done so generally for the reason that the constitution or statute governing the case provided that the charity shall be a purely public charity. ...These cases are not applicable to the question under consideration. Our constitution does not contain the word "public" in connection with "strictly charitable purposes." (Emphasis Added)

Dissenting Opinion. Mr. Justice Teller wrote a dissenting opinion in the Horton v. Masonic Society case:

...First, the decisions cited as committing us to the rule of liberal construction do not determine that such rule should be generally applied in this jurisdiction, but only that the ...rule should be modified as to the schools; ...

...This affords no possible ground for holding that the first floor of the so-called Masonic Temple is exempt. The construction there applied was, as the opinion states, necessary to prevent a limitation of the exemption to the things which are absolutely indispensable to a school, and thus interfere with its work. If is be supposed that a clubhouse or social hall is indispensable to the main purpose for which the Masonic lodges are constituted and property acquired, it is pertinent to inquire why the great majority of lodges have not and never have had club rooms annexed to them?

...Conceding, now, that by weight of authority Masonic lodges are charitable institutions, and that the property used for strictly

lodge purposes should be exempt from taxation, it by no means follows that all of the property here involved is entitled to such exemption. How can it be said that the use of so much of this property as is in effect a clubroom for the use of lodge members -- with no necesaary connection with the general work of the order, -- relieves the state of any burden.

Under a simple social organization, with a rapid increase of wealth and tax-paying power, the question of exemptions was not of very great importance; but, with increased complexity of social and political relations, and consequent increase of public expenditures, it becomes more and more necessary to widen the field of taxation so as to equalize the burdens of government.

It is clear that use of part of the building for noncharitable purposes puts that much of the property in competition with all persons who have property to rent for similar purposes. Were the first floor of the building not used for social purposes, the parties not thus using it, must if they would have a clubroom, either buy or lease other property which pays taxes. No one would claim that property, used as is the first floor of the building in question, and separate from the building containing the lodge rooms, would be exempt. That being so, it is evident that the only ground of exemption is its physical connection with the lodge rooms. It cannot be said that the people, who frequent the rooms on the first floor and enjoy its privileges, are objects of charity. Doubtless, they would resent such an imputation. Yet, if as to them the first floor is not devoted to charitable uses, it is not so used at all.

The court also approved the liberal rule of construction in Board of County Commissioners of Rio Grande County. Et al v: San Luis Valley Masonic Association (1926), 80 Colo. 183. Excerpts from the case follow:

...that plaintiff is the owner of 160 acres of land in Rio Grande County, which tract is commonly known and designated as "Masonic Park" on which are located three buildings...all owned by the plaintiff and used for masonic purposes, including fraternal, pleasure, and recreation;

...It is admitted that the plaintiff's articles of incorporation provide, inter alia, that the business and object for which the

association was formed was to promote social intercourse among themselves and associates, and to acquire, hold, and convey real estate and personal property, to borrow money for the purposes of improving their property and to have and maintain in the county of Rio Grande, for the use of themselves and other associates for the purpose mentioned, an association or club house with all the appurtenances and belongings, and matters and things of a club or association, as usual thereto.

Defendants contentions are that the use of the property is not for strictly charitable purposes; that ownership of the land has nothing to do with the question under consideration; that whether it is exempt from or subject to taxation depends upon the use of the land and the buildings thereon, and that the admitted facts show that they are used for residence or recreation purposes.

While the use of a tract of land or park with buildings thereon for strictly charitable purposes may be unusual and out of the ordinary, we know of no reason why they may not be so used. In the Horton case, supra, we held that the buildings and grounds were exempt from taxation, although the proof disclosed that the first floor contained a reading room, a smoking and reception room, and another large room sometimes used in connection with the others for dinners and dances given by members of the different bodies; that sometimes entertainments were restricted to members and other times nonmembers were included, and that the society maintained in the building a cigar stand for the sale of cigars, tobacco, and other things to those privileged to be there. It further appeared in that case that plaintiff rented the property to certain Masonic organizations who were stockholders of the plaintiff in that case.

Following the rule of liberal construction adopted in this jurisdiction, it seems quite clear that the property in question was exempt from taxation. From the admitted facts, it seems plain that the property was used strictly for charitable purposes within the spirit and meaning of the Constitution and statutes.

We think the principles announced in the Horton case, supra, are applicable to the facts in the instant case, and because the facts in that case were so thoroughly considered and

> the numerous authorities cited and reviewed, we deem it unnecessary to further discuss the matter here. We are of the opinion that the mere selling of leasehold interests to Masonic purchasers of certain lots of plaintiff's land, upon which they erect their own buildings and for their own use, is not sufficient to take from plaintiff's property its exempt character.

Denial of Exemption to Social Organizations and Labor Unions

In at least four situations, the Tax Commission has denied exemptions to social clubs -- Polish Club and Slavic Club for examples. The commission after a review of the by-laws of these organizations has refused to grant tax exempt status on the grounds that their charitable activities are only incidental to their social programs. Supporting the determination of the commission is the Colorado Supreme Court's ruling in Denver Press Club v. Collins (1932), 92 Colo. 74. An excerpt from this case follows:

> The sole and only question presented for our determination is whether, under the facts herein, the property of this plaintiff is exempt from taxation as being used solely and exclusively for strictly charitable purposes. ...We have read the decisions and studiously considered the entire records in those cases, and do not belive that, under them, plaintiff is exempt. ...The evidence offered herein definitely establishes that plaintiff is a social organization, and that any charitable work done is incidental to the principal object for which the club is organized. The fact that plaintiff's members, as individuals, are public spirited enough to assist in raising funds for strictly charitable organizations does not inure to the benefit of the plaintiff, and does not make plaintiff a charitable organization within the purview of our Constitution.

A review of the tax exempt records of the City and County of Denver reveal that the Denver Press Club and the Denver Woman's Press Club currently are exempt. It must be emphasized that current criteria for granting an exemption is that an association is organized for charitable purposes. Those exemptions have not been reviewed by the commission.

The Supreme Court also ruled against tax exemptions for labor unions. In Lane v. Wilson (1938), 103 Colo. 99, the court held that:

> ...we still adhere to the distinction between a charity, and a beneficial society whose beneficience is confined to the members,

their families, dependents or friends, and depends upon the contributions made, not voluntarily given, but assessed against the members. Such an organization, we have described as "not a charity, but a private institution for the mutual advantage of the members."

Physical Training Clubs

It is interesting to note that the Denver Turnverein (athletic club) was granted an exemption by the Supreme Court on the grounds that it is an educational institution -- Denver Turnverein v. McGlone (1932), 91 Colo. 473, 15 P. 2d 709. The Turnverein is interested in promoting physical and mental qualities of its members. In part, the opinion of the court states:

> ...corporation not for profit; that it owns lots in Denver on which there is a one story building and basement, equipped with gymnastic apparatus, ...its purpose, to which it conforms, are to promote the physical and mental qualities of its members and others who may comply with its rules, ...and whatever may be incidental thereto, and to extend a charitable hand to those in need; that its doors are never guarded and all well-behaved persons, regardless of race or creed, are welcomed to its classes and its charities, not restricted to its membership, are as extensive as its funds will admit. ...It does not appear that its members, or their dependents or descendents, as such, have any claim to, or right in, any of its funds, ...
>
> We think that notwithstanding plaintiff's charities are althgether worthy, its primary objective may fairly be said to be educational. ...In the case of Bishop of the Cathedral of St. John v. County Treasurer, 29 Colo. 143, 68 Pac. 272, ...Mr. Justice Gabbert concluded provisions exempting property used for educational purposes are less strictly construed than those exempting property used for ordinary gain or profit. ...The court concluded that only a narrow construction, doing violence to the intent of the people and legislature with respect to, not to be indulged, would operate to defeat the claim for exemption, ...
>
> We conclude on the facts here that the plaintiff is conducting an educational institution worthy of encouragement, and one coming within the reasonable purview of the law making property, such as it owns, and used as appears, exempt from taxation. As we have seen, the plaintiff emphasizes and teaches physical culture, held generally to be an important element in

educational development. As was said in Mt. Herman Boys' School v. Gill, 145 Mass. 139, 146 N.E. 354: "Education may be particularly directed to either the mental, moral, or physical powers and faculties, but in its broadest and best sense it relates to them all."

...If three institutions are organized -- one seeking by a course of instruction to cultivate the mind, one by a method of instruction to improve students' religious or moral conditions, and another to teach physical culture to produce a better physical development, each is an institution of education, as much as the one at which the student can acquire the threefold knowledge. It is simply a matter of judgment or convenience, whether one shall furnish all the opportunities for the acquisition of an education or whether there shall be separate institutions for that purpose...

Following the Turnverein case the General Assembly enacted legislation clarifying what may be considered a school. At the time of the Turnverein case, the law listing properties qualifying for exemption provided:

...grounds with buildings thereon, if said buildings are used exclusively for schools, other than schools held or conducted for private or corporate profit. (Laws of 1921, page 687).

The law was amended in 1933 to provide:

(3) The property real and personal, that is held exclusively for schools other than schools held or conducted for private or corporate profit. School is hereby defined to mean an educational institution requiring daily attendance, having a curriculum comparable to a grade, grammar school, junior high, high school or college or any combination thereof and having an enrollment of at least forty students and charging a tuition fee.

Although it would appear that statutory amendments subsequent to the Turnverein decision negate this decision, Webster's New International Dictionary, Second Edition, Unabridged, points out that in the usual sense curriculum means:

The whole body of courses offered in an educational institution, or by a department thereof. On the other hand, strictly speaking, curriculum means "A course; especially, a specified fixed course of study, as in a school or college, as one leading to a degree."

Under the aforementioned definition schools or other nonprofit organizations offering individual courses could qualify for tax exemptions. For this reason the Denver Judo Club, the Westernaires (Jefferson County Saddle Club), the American Institute of Banking, etc., were granted tax exemptions by the commission.

Parking Facilities

The Supreme Court's liberal rule of construction as emphasized in the preceding paragraphs again suggests that the use of parking facilities for church services is essential to the present day conduct of a religious program. As long as the parking lots are used solely and exclusively for religious services the exemption is granted. However, if the parking lot is leased on weekdays for commercial parking the exemption is lost.

Perhaps a Supreme Court case that best illustrates the concept of the liberal rule of construction as applied to the exemption of property directly related to the principle function for which the exemption is granted is Horton v. Fountain Valley School (1936), 98 Colo. 480.

In this instance, the Court stated:

> ...There is no contention that the school here concerned does not come within the above statutory definition, and the trial court apparently so found; also that acreage or grounds to the extent of approximately 175 acres were used in connection with the operation of the school and therefore exempt. In arriving at this conclusion, the trial court necessarily had to, and did, determine that the school was not held or conducted for private or corporate profit. On each of these questions the court's finding is amply supported by the evidence and therefore will not be disturbed.
>
> Having affirmed the judgment of the trial court to this end, it is needless to discuss the question of the exemption or taxability of the residue of the land, other than to determine whether or not it is used in connection with the school as such. There is no constitutional limitation as to the number of lots that may be held by schools; neither is there any statutory limitation as to the extent of grounds, as such term is used in the statute, that may be used in connection with schools.
>
> ...in Bishop, etc. v. Treasurer, 29 Colo. 143, 68 Pac. 272, if the use of property utilized for a school is limited to that which is indispensable for this purpose, the extent to which institutions of this character are benefited by exemption from taxation is confined to the

narrowest possible limits, and every use which could be dispensed with and yet permit a school to be conducted which might be so termed in name, would subject the property so used to taxation. Such a construction would be too narrow, and fall far short of expressing the intent of the people and legislature with respect to schools. The fundamental object of the law was to exempt property used for school purposes from taxation. ...the uses permissible must necessarily embrace all which are proper and appropriate to effect the objects of the institution claiming the benefits of the exemption. ...The constitutions and statutes mention no particular or specific character of use, and all requirements are met if a use is for the purposes fostered for exemption. The taxing authorities admit a use by contending that the use is insignificant. It is not for them to measure a use. Neither is it for them to conjecture whether or not the institution might at some time become a profit-making enterprize... The school, to obtain exemption for present use, was not required to allege further. If a pecuniary benefit is ever derived from a profit resulting from the operation of the school, a violation of its charter then would be imminent...

Vacant Lands

The Tax Commission has consistently denied granting tax exempt status to vacant lands owned by religious and charitable institutions. In many instances, religious organizations have obtained a site for a church and filed for an exemption with the Tax Commission. Although the land has been purchased for the location of a church or charitable building and architects plans have been filed, etc., for construction of the building, the Tax Commission still has denied exemption.

The commission's position has been substantiated by the Supreme Court in Denver v. George Washington Lodge Association (1950), 121 Colo. 470. In this instance, the court commented on the traditional liberal interpretation of the Constitution that the court has held concerning tax exempt property, pointing out that churches or charitable buildings under construction have been held to be tax exempt. However the Supreme Court could not concur in an exemption granted for vacant property in which a building is to be constructed at a future date. In part, the court stated:

> ...In the present case, we are asked to go one step further and hold that the mere purchase under contract of a vacant property, with general intent at some future date to erect thereon a building to be used for a charitable purpose, would, by some legal fiction, create both a

building and establish its present use for a strictly charitable purpose. It is not surprising, in view of the former decisions of this court, that the trial court so held. However, a departure is nonetheless a departure because it is made step by step, and it appears high time for this court to determine, not merely how far we have departed from the last departure, but whether we have departed from the requirements of the statute itself. That statute does not exempt lots intended as building sites if the buildings to be erected are intended to be used for strictly charitable purposes, but only lots with the buildings thereon if said buildings are used for strictly charitable purposes. When, as here, there is neither the present charitable use nor the vestige of a building in which such use might be carried on, there appears to be no possible basis for exemption, except sympathy for a purpose which we may regard as commendable.

...In deciding the El Jebel case more than sixteen years ago, this court took judicial notice of the fact that the existence of a world-wide depression had prevented the completion of many similar buildings. Today we cannot be blind to the fact that the property there involved, situated in close proximity to the State Capitol grounds, remained through many years unused for any purpose, the building still incomplete, the property exempt from taxation and the original intent long obscured.

Staff Residences for Hospital

The Tax Commission has granted exemptions for staff residences owned by a hospital and located in close proximity to the institution. Perhaps the reason for the exemption is that hospital personnel are subject to emergency calls and must live within a few minutes travel time of the hospital. The Supreme Court's decision in the Bishop and Chapter v. Treasurer of Arapahoe County (1902), 29 Colo. 143, may reflect to some degree the basis for the commission's action. In this situation, the Treasurer of Arapahoe County denied an exemption on real estate known as Matthews Hall, because the building was utilized as a residence for the bishop of the diocese. The exemption was claimed for educational purposes, and the school was conducted in Matthews Hall under the direction of the bishop. The Supreme Court held:

...The occupation by the bishop is in conformity with the conditions upon which part of the funds used for the purchase of the premises were given. He occupies these premises in his official capacity as chief instructor of the school. In this capacity his presence resulting from residence is required. He is actually an

> instructor; his object in occupying the premises is to discharge his duties in that capacity; hence his dominant purpose in residency at the hall is to carry out the objects of the institution, and it is this purpose which gives character to the use by him.

Although the residences are not located on the grounds of the hospital, the commission apparently expanded the concept outlined in the Bishop of the Cathedral of St. John case because the residences are essential to the operation of the hospital.

This same analogy also could be applied to ad valorem exemptions granted for staff residences of volunteer social workers, campus night watchman for a women's college, etc.

Summary of the Problem of Private Ad Valorem Exemptions

The exemptions granted by the Tax Commission have followed very closely the Supreme Court's basic premise that constitutional and statutory provisions for ad valorem exemptions for charitable, religious, and school property should be liberally interpreted. That is, if the property is needed in the actual conduct of a church program, a qualifying educational activity, or charity, the property is entitled to an ad valorem tax exemption. Thus, although a church parking lot is not used solely and exclusively for religious worship, the parking lot is considered essential to the conduct of the affairs of the church and should be granted an exemption.

The courts and the Commission also have expanded the liberal rule of construction to include organizations that are self-supporting--senior citizen homes, for example. The mere fact that fees, charges, or rents finance construction and maintenance of a piece of property is not sufficient grounds for denying an exemption. In other words, a charity does not necessarily mean "pauperism," or economic dependence on private or governmental welfare. Assistance and comfort to the aged, regardless of their financial means, constitutes a charity according to numerous court decisions in other jurisdictions. With this in mind, it would appear that the charitable nature of senior citizen homes, hospitals, etc., is lost only when the institution derives a profit from its operation.

The Supreme Court and the Commission have considered "use" of property as the critical factor in the determination of whether the "liberal rule" of construction should apply. If a private institution that is entitled to an exemption owns property that is not in use, or from which income is derived, the courts and the Tax Commission have concluded that the property is not entitled to an exemption.

The Issue

Since there has been little change in the constitution and statutes, as they relate to private tax exemptions, members of the Commission, Colorado Municipal League, etc., have commented that the increased growth of various nonprofit enterprises, particularly senior citizen homes, etc., is eroding the property tax base of local governments, while, at the same time, adding to the burden of county, city, town and special district services. Whether or not an institution is a charity may not be the real issue at stake. Rather, the question is: "At what level of government are charities, religious institutions and private schools to be supported?" After all, a tax exemption, as expressed by Ray Carper, Tax Commissioner, at the June 9, 1965 meeting of the committee, "is a subsidy paid for by the owners of taxable property." The property tax primarily is a local government tax, and it follows that an institution deriving benefit through a subsidy at the local level actually is

supported by this level of government. This raises the fundamental question of whether local governments should bear the burden of private exemptions.

On the other hand, property tax relief is a simple and economical means to encourage desirable activities that may enhance the community and reduce the burden of government. If property tax relief for senior citizens is a worthwhile endeavor, because many of these individuals are living on moderate fixed incomes, should not the exemption apply to all elderly persons? Realizing that a broadening of the tax exempt base will add to the probems of local government, the impact of these exemptions to local governments may be reduced by alternate forms of financing. Furthermore, state assistance to local government may be a more practical approach to encouraging charitable and religious activities than trying to determine individually, by some form of direct subsidy, which activities should be encouraged and which should not.

In summary, a review of tax exemptions not only entails a determination of the worthiness of an activity and whether the program needs to be encouraged financially by government action, but consideration needs to be given to the means for financing the governmental subsidy as well as the level of government that is to bear the burden of the subsidy.

Periodic review of the following basic questions may be helpful:

1) Should the statutory definitions of educational, religious, and charitable purposes be made more strict?

2) If current exemptions are to be encouraged, should local government bear the entire cost of the subsidy?

3) Based on the trend of ever increasing erosion of the ad valorem tax base, are local governments in need of developing alternative sources of revenue?

4) Should exempt institutions pay fees in lieu of taxes or nonschool taxes to finance the cost of services rendered to the tax exempt properties?