



CAMERON COUNTY DISTRICT ATTORNEY
CAMERON COUNTY COURTHOUSE
974 E. HARRISON STREET · BROWNSVILLE, TEXAS 78520

Yolanda de León
County (Criminal District) Attorney

RQ-0078-JC

June 16, 1999

JUN 22 1999
Opinion Committ

Office of the Attorney General
Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

FILE # 171L-40884
I.D. # 40884

Re: Request for an Attorney General's Opinion Concerning
V.T.C.A., Property Tax Code §11.18 and § 33.011.

Dear Sirs:

Our office received a request for an opinion regarding the above sections of the Property Tax Code by a county official. This office researched the issues presented and provided an opinion. It appears that the issues are still unresolved (See Attached Memo) and an Attorney General's Opinion is being requested.

QUESTION PRESENTED

Whether Cameron County can waive taxes, penalties, and interests on real property that houses a non-profit organization but is owned by an individual.

BRIEF

FACTS PRESENTED

The following were the facts presented to this office: "The owner of the land uses the land for a non-profit organization, but has not filed as a non-profit organization." The building has been used by the non-profit organization since 1987. Tax records indicate that the owner of the property is an individual. County taxes have not been paid on the property from 1988 to the present.

CONCLUSIONS AND FINDINGS

After a thorough review of the relevant statutes, case law, and attorney general opinions, this office found as follows:

1. A waiver of penalties and interest under V.T.C.A. Property Tax Code §33.011 does not apply in this case. Under the statute, penalties and interest can be waived by the governing body of a taxing unit if "...an act or omission of an officer, employee, or agent of the taxing unit or the appraisal district in which the taxing unit participates caused or resulted in the taxpayer's failure to pay the tax before the delinquency and if the tax is paid within 21 days after the taxpayer knows or should know of the delinquency." In this case it appears that the taxpayer has been given notice on a regular basis, and knows or should know that the tax is owed. The taxes owed to the county have not been paid from 1988 to the present.

2. A charitable organization is entitled to an exemption from taxation if the building is owned by the charitable organization and the property is used exclusively by a qualified charitable organization under §11.18(a)(1)&(2) of the Property Tax Code.
3. In order to qualify for an exemption, a non-profit organization is required to own the property for which it seeks the exemption. V.T.C.A. Property Tax Code §11.23.
4. The property in question is owned by an individual, not the non-profit organization, therefore the property does not qualify for an exemption. "...[A]n institution must be one of purely public charity in the purposes for which it is formed and in the manner and means it has adopted for the accomplishment of such purposes; this being so, and in addition, the properties which are the subject of the claimed exemption must be owned and used exclusively by the institution in furthering its charitable activities." *Hilltop Village Inc. v. Kerrville ISD*, 426 S.W.2d 943, at 946, (Tex. 1968). To qualify for an exemption the non-profit organization must meet the statutory requirements. *Hilltop* at 949.

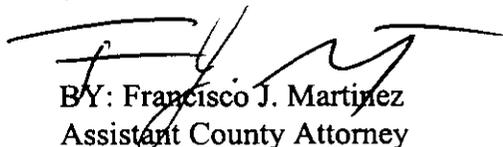
5. In 1980 the Office of the Attorney General was asked to rule on the constitutionality of V.T.C.A. Property Tax Code §11.18. The Attorney General found that "Section 11.18 of the Property Tax Code governing charitable tax exemptions is constitutional. To be eligible for the exemption, property must be owned by an institution of purely public charity that is organized exclusively to perform certain charitable functions defined by the statute." Tex. Atty. Gen. Op. MW-288, (1980). If the charitable organization does not meet the test it is not eligible for an exemption.

CONCLUSION

If the facts presented above are that the property in question is owned by an individual then *Hilltop*, a Supreme Court case, and the Attorney General's Opinion MW-288 make it clear that the property is not eligible for a tax exemption. It is not necessary to determine if in fact the non-profit organization meets the statutory requirements of a charitable organization since it fails to meet the requirement of ownership.

Submitted

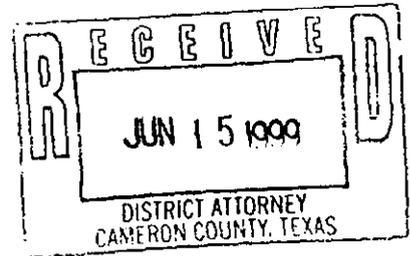
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BY: Francisco J. Martinez
Assistant County Attorney



GILBERTO HINOJOSA
COUNTY JUDGE



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COUNTY COURTHOUSE
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MEMO

To: Frank Martinez, Assistant District Attorney
From: Gilberto Hinojosa, Cameron County Judge
Date: June 14, 1999

A handwritten signature in black ink, appearing to be "G.H.", written over the "From:" line of the memo.

Re: Ramirez' Property Taxes Owed to County

I have received your opinion, and would still like to pursue an Attorney General's Opinion on whether the County can waive taxes, penalties, and interest on this account. Please prepare the request. Thank you for your cooperation.