



STATE TAX COMMISSION OF MISSOURI

MERCY HEALTH,)
)
 Complainant,)
) Appeal No. 19-90001
 v.)
)
 DEBBIE JAMES, ASSESSOR,)
 TEXAS COUNTY, MISSOURI,)
)
 Respondent.)

DECISION AND ORDER

MERCY HEALTH (Complainant) appeals the Texas County Board of Equalization's (BOE) decision that affirmed the determination of the Texas County Assessor that the subject property did not qualify for exemption from personal and real property tax as of January 1, 2019. Complainant alleges that the activities of Complainant meet the requirements for exemption as provided in Missouri Constitution, Art. 10, Section 6 and Missouri Revised Statute Section 137.100. The BOE decision is Affirmed.

These matters came on for Evidentiary Hearing before Senior Hearing Officer Todd D. Wilson on August 20, 2024 via WebEx. This appeal was combined for efficiency purposes for hearing with Mercy Health appeals in Dallas County, Pulaski County and Wright County. Complainant was represented by counsel, Apollo Carey. Respondent was represented by counsel, Parke Stevens, Jr. Complainant had submitted written direct testimony prior to the hearing that was incorporated into the hearing without objection.

Complainant’s Exhibits Offered and Received without objection as follows:

Exhibit	Description	Status
A	Mercy Health Audited Financials FYE June 30, 2016 and June 30, 2017	Received
B	Mercy Health Audited Financials FYE June 30, 2017 and June 30, 2018	Received
C	Mercy Health 2016 Form 990	Received
D	Mercy Health 2017 Form 990	Received
E	Mercy Health Financial Assistance Policy	Received
F	Mercy Health Amended Articles of Incorporation	Received
G	Exemption Application	Received
H	None	
I	Original Articles of Incorporation for Mercy Health	Received
J	Letter to Assessor transmitting exemption application	Received
K	Mercy Health Bylaws	Received
L	2019 FY Financial Statement – Summersville	Received
M	Ethical and Religious Directives for Catholic Health Care Services	Received
N	None	
O	2018 FY Financial Statement – Summersville	Received

Background

Mercy Health was founded in 1837 by Catherine McAuley, a nun, originally from Ireland. The current Articles of Incorporation (Exhibit F) set forth the mission of the Corporation to operate to serve the mission of the Roman Catholic Church and Mercy Health Ministry . . . to succeed and carry on the health care ministries conducted by the Institute of the Sisters of Mercy of the Americas, St. Louis Regional Community (“Sisters of Mercy”), a religious order of the Roman Catholic Church, in its charitable apostolate and health services . . . The Articles have standard provisions for a Not-for-Profit corporation in that there are no members, no part of the net earnings may inure to the benefit of, or be distributable to the Directors, Officers, or other private persons.

This appeal involves a commercial parcel on which the Mercy Family Medicine Clinic - Birchtree is located. The facility is owned, ultimately, by Mercy Health. It encompasses a building sitting on a tract with a Parcel ID of 23-0.6-24-001-007-006.00. The assessor valued the property

at a TVM of \$61,020 with an assessed value of \$19,530. The BOE affirmed the decision of the Assessor to deny the exemption and affirmed the values set.

1. FINDINGS OF FACT

Mercy Health is a not-for-profit corporation with no members. Mercy Health files form 990 with the IRS every year and no profit is distributed to any individual person or entity. Its central administration and operational hub is in St. Louis, Missouri. The properties in these appeals are located in what Mercy Health refers to as the Mercy Health – Springfield Community which encompasses Southwest Missouri hospitals, clinics, hospice and pharmacies owned, ultimately by Mercy Health although different wholly owned subsidiaries may hold the title to the property. Mercy Health has annual income of approximately nine billion dollars. The Springfield Community portion of Mercy Health has annual income of approximately \$274,000,000.

Mercy Health has a Financial Assistance Program as set out in Exhibit E. Mercy Health – Springfield Community expenses over \$5,000,000 annually in accordance with this program, dubbing it “charity care”. The program is provided to people for emergency and other medically necessary care based on need. Elective medical care or care determined not to be medically necessary or emergent is not covered by this program. To qualify for the Financial Assistance Program, generally, an application has to be completed showing that the applicant’s income is below 200% of the Federal poverty guidelines with low propensity to pay.

Mercy’s Financial Assistance Program states on Page 3, Paragraph V.(a) “All Professional Services are excluded from the Hospital and Health Services Financial Assistance Policy unless specifically listed as included. Reference the attached *Exhibit C* for a complete listing of included services.” Exhibit C makes no reference to the clinic that is the subject of this appeal.

Mercy Health has approximately \$15,000,000 per year in Medicaid loss and insurance write downs in the Springfield Community of facilities.

No evidence was presented as to the amount of Charity Care or Medicaid loss each, separate, facility in the appeals expended.

The clinic in this appeal is not an emergent health facility and is open only for set office times.

2. **Complainant's Evidence.** Complainant had Jill McCart testify, both in Written Direct Testimony and live testimony. She is the Vice President of Accounting and Reporting for Complainant and has worked for Complainant for 14 years. Her testimony was credible. From her testimony and the Exhibits, it was shown that Mercy Health is a not-for-profit corporation with no members. Its purpose is to provide healthcare services and it does that through the various hospitals, clinics, hospice services and pharmacies that it operates. Mercy Health files form 990 with the IRS every year and no profit is distributed to any individual person or entity. Its central administration and operational hub is in St. Louis, Missouri. The properties in these appeals are located in what Mercy Health refers to as the Mercy Health – Springfield Community which encompasses Southwest Missouri hospitals, clinics, hospice and pharmacies owned, ultimately by Mercy Health although different wholly owned subsidiaries may hold the title to the property. Mercy Health has annual income of approximately nine billion dollars. The Springfield Community portion of Mercy Health has annual income of approximately \$274,000,000. All of the properties in these appeals operate at a loss every year. Mercy Health completes a Community Health Needs Assessment every 3 years to determine the needs of the communities in which they have facilities. From the Needs Assessment, a Community Health Improvement Plan is developed that focuses on the medically underserved, uninsured, minority and low-income residents of those communities. This Plan can include improving access to healthy food, providing education and counseling so that the residents can be healthier and need less healthcare in the future.

Ms. McCart testified that doctors in the Mercy Health system are paid in accordance with Work Relative Value Units (WRVUs). WRVUs are determined by billing codes set by a Federal Agency. WRVUs are the standard method for compensating doctors by both private hospitals and not-for-profit hospitals. She stated that there are, generally, provisions for doctors who meet their annual goals to receive additional compensation. The goals are not based solely on the WRVUs completed but also on the quality of care provided and other factors. This additional compensation is not dependent upon whether the facility in which they practice operates at a profit.

Ms. McCart also testified regarding officer's salaries and bonus and incentive compensation. She explained that there is a possibility for officers of the corporation to receive bonus and incentive compensation if goals set for the officer are met. The bonus and incentives offered to doctors and officers are not dependent upon the profitability of the corporation and are in place to encourage exceptional care.

Ms. McCart testified that Mercy Health has approximately \$15,000,000 per year in Medicaid loss and insurance write downs in the Springfield Community of facilities. On cross, she was unable to give any specific amount of charity care or Medicaid loss for a particular facility and agreed that a for-profit healthcare facility would have insurance write downs as well.

Ms. McCart testified that in accordance with the mission of Mercy Health, no patient will be turned away from a Mercy Health facility for emergency health or medically necessary needs because of their inability to pay. Upon cross examination, she testified that if someone showed up at a clinic with an emergency health issue, the staff would call 911 for an ambulance as the clinics are not set up for emergency health issues. The clinics have regular business hours and are not open 24 hours per day. She further agreed that elective procedures, such as cosmetic surgery that is not medically necessary would not be done if the patient did not have the ability to pay for the

services.

Ms. McCart testified that Mercy Health lessens the burden on government by helping anyone who requires necessary medical care irrespective of their ability to pay, helping provide access to healthy food, providing medical care of the highest quality and education so that patients can be healthier and need less healthcare in the future.

Ms. McCart testified that the Financial Assistance Policy set out as Exhibit E applies to all the clinics and properties owned and operated by Mercy Health. The Financial Assistance Policy is promoted on their website and welcome forms. She further stated that more than \$5,000,000 per year in the Springfield Community was considered charity care services provided. These services represent people who meet the requirements of the Financial Assistance Program. To qualify for the Financial Assistance Program, an applicant's income has to be below 200% of the Federal poverty guidelines with low propensity to pay. Ms. McCart further stated that there are times when an applicant will be considered for Financial Assistance without an application based upon the applicant's zip code. On Cross Examination, Ms. McCart admitted that Exhibit E, Mercy's Financial Assistance Policy states on Page 3, Paragraph V.(a) "All Professional Services are excluded from the Hospital and Health Services Financial Assistance Policy unless specifically listed as included. Reference the attached *Exhibit C* for a complete listing of included services." Ms. McCart also agreed that the subject facilities are not listed on the Exhibit C referenced. Ms. McCart was unable to explain why the facilities that are the subject of these appeals are not on the included list of Exhibit C to Complainant's Financial Assistance Policy. Ms. McCart reiterated, however, that all of the facilities, clinics and pharmacy were included in the Financial Assistance Program despite the language in the policy.

Ms. McCart stated that accounts of patients who do not meet the requirements of the

Financial Assistance Program are expected to pay for their services and that Mercy Health will attempt collections.

Complainant maintains that the property meets the three factors of the *Franciscan Tertiary Province of Missouri, Inc. v. State Tax Commission*, 566 S.W.2d 213, 219 (Mo. 1978) and its progeny which are: (1) is “owned and operated on a not-for-profit basis so that there can be no profit, presently or prospectively, to individuals or corporations;” (2) “dedicated unconditionally to the charitable activity” per the definition of “charity” set forth in *Salvation Army v. Hoehn*, 188 S.W.2d 826, 830 (Mo. Banc 1945); and (3) that “the dominant use of the property must be for the benefit of an indefinite number of people” and directly or indirectly benefits society generally.

Complainant maintains that it meets the first factor, the clinics and pharmacy are owned and operated on a not-for-profit basis, because it is a not-for-profit, charitable organization recognized for exemption under Section 501(c)(3) of the Internal Revenue Code and that these facilities have never made a profit.

Complainant maintains that it meets the second factor, exclusive use of the property for charitable purposes by providing healthcare services that are medically necessary to any patient irrespective of the patient’s ability to pay.

Complainant maintains that it meets the third factor, that the dominant use of the property must be for the benefit of an indefinite number of people and directly or indirectly benefits society generally in that it completes a Community Health Needs Assessment every 3 years to determine the needs of the communities in which they have facilities and from the Needs Assessment, a Community Health Improvement Plan is developed that focuses on the medically underserved, uninsured, minority and low-income residents of those communities. This Plan can include

improving access to healthy food, providing education and counseling so that the residents can be healthier and need less healthcare in the future.

3. **Respondent's Evidence.** Respondent presented the testimony of Debbie James, the Texas County Assessor in live direct testimony. Ms. James testified regarding the application for exemption procedure and stated that based on her understanding, the property should not be exempt.

Respondent asserts that prior decisions of the STC in *St. Luke's Shawnee Mission Medical Group v. Keck*, STC appeal numbers 99-59500 and 99-59501 and in *St. John's Health System v. Twitty*, Appeal numbers 00-32500, 00-55500, 00-78000, 00-80000, 00-87000, 00-87001, 00-83500, 00-90000, and 00-94000 are appeals that were sufficiently similar in facts that should act as precedent for this matter. The Twitty case was further appealed to the Southern District of the Missouri Court of Appeals as *Twitty v. State Tax Com'n of Missouri*, 896 S.W.2d 680 and has not been overturned.

Respondent asserts that the subject property is used as a clinic, not a hospital. Clinics do not provide emergent care, are not open 24 hours per day and do not provide services that are not "medically necessary" to people who cannot pay for the services. The possible provision of charity through the Financial Assistance Policy; along with Medicaid, Medicare and insurance write offs, is insufficient to qualify the property for a charitable exemption. Respondent argues that a private, for-profit clinic or pharmacy would have the same amount of Medicaid, Medicare and insurance write offs. Respondent further argues that just because a business operates at a loss does not make it a charitable organization, it could just be bad business.

CONCLUSIONS OF LAW

1. Evidence. "Although technical rules of evidence are not controlling in administrative hearings, fundamental rules of evidence are applicable." *Mo. Church of Scientology v. State Tax*

Comm’n, 560 S.W.2d 837, 839 (Mo. Banc 1977). The hearing officer is the finder of fact and determines the credibility and weight of the evidence. *Kelly 8 v. Mo. Dep’t of Soc. Servs., Family Support Div.*, 456 S.W.3d 107, 111 (Mo. App. W.D. 2015).

2. “STC decisions and orders are non-binding, persuasive authority aiding the consistent disposition of factually analogous cases.” *Tuba v. Zimmerman*, Appeal No. 21-18285, 2022 WL 16841480 at• 6 (Mo. St. Tax Com. Nov. 4, 2022) (emphasis added); *see also Laclede Gas Co. ‘s Verified Application to Re-Establish & Extend the Fin. Auth. Previously Approved By the Comm ‘n v. Mo. Pub. Serv. Comm ‘n*, 526 S.W.3d 245, 252 (Mo. Ct. App. W.D. 2017) (an administrative agency, such as the STC, “is not bound by its previous decisions, so long as its current decision is not otherwise unreasonable or unlawful.”).

3. Charitable Exemption: Article X, section 6 of the Missouri Constitution provides “all property, real and personal, not held for private or corporate profit and used exclusively . . . for purposes purely charitable . . . may be exempted from taxation by general law.” Consistent with this constitutional provision, Section 137.100(5) exempts from taxation:

All property, real and personal, actually and regularly used exclusively for religious worship, for schools and colleges, or for purposes purely charitable and not held for private or corporate profit, except that the exemption herein granted does not include real property not actually used or occupied for the purpose of the organization but held or used as investment even though the income or rentals received therefrom is used wholly for religious, educational or charitable purposes[.]

“Tax exemptions are construed strictly against the taxpayer, and any doubt must be resolved in favor of application of the tax.” *SEBA, LLC v. Dir. Of Revenue*, 611 S.W.3d 303, 313–14 (Mo. Banc 2020). Exemptions are “allowed only upon clear and unequivocal proof, and any doubts are resolved against the party claiming it.” *Id.* (internal quotation omitted).¹

To obtain a charitable exemption, the taxpayer must show the property: (1) is “owned and operated on a not-for-profit basis so that there can be no profit, presently or prospectively, to

individuals or corporations;” (2) “dedicated unconditionally to the charitable activity” per the definition of “charity” set forth in *Salvation Army v. Hoehn*, 188 S.W.2d 826, 830 (Mo. Banc 1945); and (3) that “the dominant use of the property must be for the benefit of an indefinite number of people” and directly or indirectly benefits society generally. *Sunday School Bd. Of the Southern Baptist Conv. V. Mitchell*, 658 S.W.2d 1, 5 (Mo. Banc 1983) (citing *Franciscan Tertiary Province of Missouri. Inc. v. State Tax Comm’n*, 566 S.W.2d 213 (Mo. Banc 1978)), (hereinafter “*Baptist Bookstore*”). The Court thus made it clear that the language of the charitable exemption provisions “makes the use of the property the focus of the exemption” and that the “general nature of owning organization—other than that it is not-for-profit—cannot be ¹said to determine whether the use of the particular property is charitable or not.” *Franciscan*, 566 S.W.2d at 223.

It is not enough, however, that the profits are ultimately used for religious or charitable purposes. “[A]n exemption will not be granted covering property which houses a business operated for the purpose of gaining a profit, even though it is turned over to a parent organization to be used for what are admittedly independently religious or charitable purposes.” *Franciscan*, 566 S.W.2d at 224. Otherwise the exception could swallow the general rule if the profits from any enterprise, be it charitable or not, were ultimately used for charitable purposes. There must be a more significant nexus between profits earned through use of the property for which an exemption is sought and the use that is made of those profits. A business cannot compete for profit and then seek to insulate itself from taxation by claiming that its profits are used to attain a religious or charitable purpose. *Baptist*

¹ See also *Am. Polled Hereford Ass’n v. City of Kansas City*, 626 S.W.2d 237, 240 (Mo. Banc 1982)(noting the taxpayer bears the burden of establishing a property tax exemption “by unequivocal proof that such release is required by the terms of the statute....”); *City of St. Louis v. State Tax Comm’n*, 524 S.W.2d 839, 845 (Mo. Banc 1975)(noting the taxpayer claiming a charitable exemption must make “a clear and convincing showing that the specific activity in question does fall within an accepted category found in the definition”).

Bookstore, Page 6.

4. Definition of Charity: The definition of “charity” which originated in *Salvation Army v. Hoehn*, 188 S.W.2d 826, 830 and approved by *Franciscan Tertiary Province of Missouri, Inc. v. State Tax Commission*, 566 S.W.2d 213, 220 is:

Probably the most comprehensive and carefully drawn definition of a charity that has ever been formulated is that it is a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. . . A charity may restrict its admission to a class of humanity, and still be public, it may be for the blind, the mute, those suffering under special diseases, for the aged, for infants, for women, for men, for different callings or trades by which humanity earns its bread, and as long as the classification is determined by some distinction which involuntarily affects or may affect any of the whole people, although only a small number may be directly benefited, it is public.

5. Hospital Exemption. A corporation the object of which is to provide a general hospital for sick persons, having no capital stock or provision for making dividends or profits, deriving its funds mainly from public and private charity and holding them in trust for the object of sustaining the hospital, and conducting its affairs for the purpose of administering to the comfort of the sick, without expectation or right on the part of those immediately interested in the corporation to receive compensation for their own benefit, is a public charitable institution. Moreover, the facts that a corporation established for the maintenance of a public hospital, by its rules requires of its patients payment for their board according to their circumstances and the accommodation they receive, that no person has individually a right to demand admission, and the trustees of the hospital determine who are

to be received, do not render it the less a public charity. *Community Memorial Hospital v. City of Moberly*, 422 S.W.2d 290, 295

Such considerations as whether a profit or loss was in fact realized or sustained, *Young Men's Christian Ass'n etc. v. Sestric* 242 S.W.2d 497, 505, or that some competition with private business exists, *Missouri Goodwill Industries v. Gruner*, 210 S.W.2d 38, 41, or that pay patients are admitted for treatment *Northeast Osteopathic Hospital v. Keitel*, 197 S.W.2d 970, 975, or that a large part of its revenue is derived from pay patients, *Nicholas v. Evangelical Deaconess Home and Hospital*, 219 S.W. 643, 646, are not determinative if, from all the evidence, it may be fairly said that the actual use made of the corporation's property is consistent with the nonprofit feature and charitable purposes expressed in the corporation's articles of agreement. *Community Memorial Hospital v. City of Moberly*, 422 S.W.2d 290, 296

The existing law in the state of Missouri is clearly discernible, i.e., providing of hospital facilities for the sick in a non-profit manner rises to a charitable purpose tax-exempt status if the same is available to both rich and poor. *Callaway Community Hospital Ass'n v. Craighead*, 759 S.W.2d 253, 256; referencing *Jackson County v. State Tax Commission*, 521 S.W.2d 378, 383.

No case has imposed a requirement that a hospital serve a certain number of indigent patients. *Callaway Community Hospital Ass'n v. Craighead*, 759 S.W.2d 253, 256.

DISCUSSION

There is no dispute that Mercy Health is a Not-for-profit corporation. It does not have shareholders and any profits of the corporation cannot inure to the benefit of any director or officer

of the corporation. There is a possibility for additional income for doctors and officers of the corporation if they met certain goals, but this possibility was not dependent upon whether or not there was a profit. This distinguishes the facts of this case from the Twitty case, *Twitty v. State Tax Com'n of Missouri*, 896 S.W.2d 680 in which the Court found that the doctor had the opportunity to share in profits of the clinic. Mercy Health timely files form 990 with the IRS and maintains its status as a charitable corporation under section 501(c)(3) of the Internal Revenue Code. In accordance with the cases cited previously giving deference to hospitals: *Community Memorial Hospital v. City of Moberly*, 422 S.W.2d 290, 295 and *Callaway Community Hospital Ass'n v. Craighead*, 759 S.W.2d 253, 256; referencing *Jackson County v. State Tax Commission*, 521 S.W.2d 378, 383; the corporation, functioning as a hospital available to the rich and poor, is a charitable enterprise. This meets the first prong of the *Franciscan* test as the properties are owned and operated on a not-for-profit basis so that there can be no profit, presently or prospectively to individuals or corporations.

Respondent's arguments that Complainant pursues collection on delinquent accounts and functions in much the same manner as a for-profit corporation are without merit considering *Community Hospital v. Moberly* and *Callaway Community Hospital v. Craighead*, set out previously.

The second prong of the *Franciscan* test: the property is dedicated unconditionally to the charitable activity in accordance with the definition of charity approved by the Court in *Salvation Army v. Hoehn*, 188 S.W.2d 826, 830; is the issue for these properties.

Deference is given to hospitals in deciding exemption matters as shown by the decisions in *Community Memorial Hospital v. City of Moberly*, 422 S.W.2d 290; *Jackson County v. State Tax Commission*, 521 S.W.2d 378 and *Callaway Community Hospital Ass'n v. Craighead*, 759 S.W.2d

253. The issue then becomes is this same level of deference given to medical clinics operated by a Not-for-profit entity that also operates hospitals and other healthcare related facilities. A hospital has an emergency department that is open 24 hours per day, a hospital has beds that keep patients overnight; clinics do not. Clinics do not provide emergent care. Clinics have set hours for patients to see healthcare providers. It is clear that the use of the subject property has to be the focus of the exemption and that the general nature of the owning organization—other than that is not-for-profit—cannot be said to determine whether the use of the particular property is charitable or not. *Franciscan*, 566 S.W.2d at 223.

The testimony of Ms. McCart was that all the clinics participate in the Financial Assistance Policy of Mercy Health, but she also acknowledged that the policy itself did not include the facilities, and, therefore, in accordance with the written policy, professional services rendered at the clinics that are the subject of these appeals would not be included in the Financial Assistance Policy. Ms. McCart further could not identify any amount of “charity care” or financial assistance from any one particular clinic.

Based on the totality of the circumstances, the fact that this property is a clinic with set hours, not a hospital that provides emergency room care; the fact that the written policy of the Complainant excludes from its Financial Assistance Policy or “charity care” all professional services rendered at the subject properties; and the fact that it was not shown that any particular amount of charity was provided at any of the subject properties, Complainant has failed to meet its burden of proof.

CONCLUSION AND ORDER

The BOE’s decision is Affirmed. The property is designated as commercial with the Parcel ID of 23-0.6-24-001-007-006.00. The TVM is \$61,020 with an assessed value of \$19,530 as of January 1, 2019.

APPLICATION FOR REVIEW

A party may file an application for review of this decision within 30 days of the mailing

date set forth in the certificate of service for this decision. The application "shall contain specific detailed grounds upon which it is claimed the decision is erroneous." Section 138.432. The application must be in writing, and may be mailed to the State Tax Commission of Missouri, P.O. Box 146, Jefferson City, MO 65102-0146, or emailed to Legal@stc.mo.gov. A copy of the application must be sent to each person listed below in the certificate of service. ***Failure to state specific facts or law upon which the application for review is based will result in summary denial.*** Section 138.432.

Disputed Taxes

The Collector of Texas County, and the collectors of all affected political subdivisions therein, shall continue to hold the disputed taxes pending the possible filing of an application for review, unless the disputed taxes have been disbursed pursuant to a court order under the provisions of section 139.031.

SO ORDERED October 7th, 2024.

STATE TAX COMMISSION OF MISSOURI

Todd D. Wilson
Senior Hearing Officer

Certificate of Service

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on October 7th, 2024, to: Complainant(s) and/or Counsel for Complainant(s), the County Assessor and/or Counsel for Respondent and County Collector.

Stacy M. Ingle
Legal Assistant