

IN THE COURT OF APPEALS OF IOWA

No. 7-765 / 97-396

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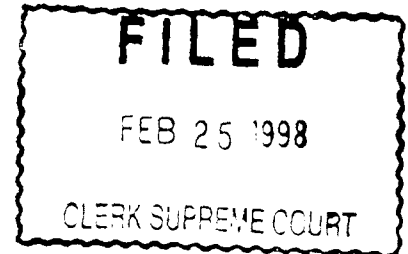
FRIENDS OF FAITH RETIREMENT HOMES, INC.,

Plaintiff-Appellee,

vs.

**THE BOARD OF REVIEW OF THE CITY OF WATERLOO
and VICKI ATKINS, BLACK HAWK COUNTY ASSESSOR,**

Defendants-Appellants.



Appeal from the Iowa District Court for Black Hawk County, Todd A. Geer,
Judge.

The defendants appeal a district court ruling reversing the board of review's
revocation of property tax exemption on the plaintiff's apartments. **REVERSED.**

Frank W. Pechacek, Jr. and Michael J. Davenport of Willson & Pechacek,
P.L.C., Council Bluffs, for appellants.

David J. Dutton and Carolyn A. Rafferty of Dutton, Braun, Staack & Hellman,
P.L.C., Waterloo, for appellee.

Heard by Cady, C.J., and Sackett, and Vogel, JJ.

CADY, C.J.

The Black Hawk County Board of Review appeals from a district court decision reversing their decision to revoke the property tax exemption for a portion of real estate owned by Friends of Faith Retirement Homes, Inc. We reverse the district court decision on our de novo review.

Friends of Faith Retirement Homes, Inc. operates a continuing care retirement community in Waterloo under the name Friendship Village. Friendship Village was organized in 1965 as a non-profit corporation. It operates a 67 bed nursing center, as well as 295 apartment units. An additional complex, Lake View Lodge, was under construction at the time of trial. The entire facility had been exempt from property tax.

In 1995, the board of review revoked the property exemption for the area of Friendship Village which housed the apartments. It placed the property on the tax rolls at a value of \$7,177,590. The nursing center remained exempt.

The district court reversed the board of review. It determined the apartments were exempt from taxation under the charitable and benevolent provisions of Iowa Code section 427.1(9) (1995).

I. Scope of Review

Our review is de novo. *Atrium Village, Inc. v. Board of Review*, 417 N.W.2d 70, 72 (Iowa 1987). We strictly construe the statutes exempting property from

taxation, and resolve any doubt concerning an exemption in favor of taxation. *Id.*

The burden of proof rests on the party claiming the property is exempt. *Id.*

II. Charitable Exemption

Three elements must be established to obtain an exemption under Iowa Code section 427.1(9). They are:

- 1) The property must be used by a charitable, religious, or educational institution or society;
- 2) The property must not be used with a view to pecuniary profit; and
- 3) The actual use of the property must be solely for the appropriate objects of the institution or society.

Friendship Haven, Inc. v. Webster County Bd., 542 N.W.2d 837, 840 (Iowa 1996).

The fighting issue, we believe, concerns the third element. We must determine whether the real estate with the apartments is being used for a charitable purpose.

To determine whether property is being used for charitable purposes by an entity providing housing and care for the elderly, it is helpful to examine several factors, including the admission and financial policies, amount and type of care provided, profitability of the operating entity, and the contributions and donations to the entity. *See Bethesda Foundation v. Board of Review*, 453 N.W.2d 224, 227 (Iowa App. 1990) (contributions help reveal institutions charitable nature and purpose); *Atrinan Village*, 417 N.W.2d at 71 (reserve fund available to absorb costs of patients unable to pay); *Richards v. Iowa Dept. of Revenue*, 414 N.W.2d 344, 352-53 (Iowa 1987) (important to examine whether profit is used for charitable purposes), *Holy*

Spirit Home v. Board of Review, 543 N.W.2d 907, 910 (Iowa App. 1995) (must provide more than housing).

In this case, the apartments are set up to allow occupants to live independently with certain services available. Once independent living is no longer possible, the residency contract provides for nursing services at the health center portion of the facility. Thus, residents can move into the health facility.

Residents pay an endowment or initial fee when they enter an apartment. This fee ranges from \$25,000 to \$122,500. Additionally, they pay a monthly service fee ranging from \$860 to \$960, with an additional monthly fee ranging from \$425 to \$535 if there is a second occupant of an apartment unit. The agreement provides residents will not be discharged if they become unable to pay the monthly fees, unless they deliberately transfer their funds to avoid payment or simply choose to stop paying.

The net worth of 73% of the individuals entering the apartments exceeded \$100,000, while nearly one-half had a net worth over \$200,000. The average net worth of the apartment residents was over \$225,000. The median income of the residents was approximately \$22,000, about twice the median of the elderly population in the country.

The average occupancy by an apartment resident prior to entering the health center is 11.5 years. The average subsequent stay in the health center is 2.5 years. The cost of care in the health center is significantly higher than the cost of the

apartments. Nevertheless, due to the disproportionate length of stay between the apartments and the health center, together with the vast difference between the revenues and expenses of the apartments, Friendship Village makes a substantial annual profit. While the health center suffers a revenue deficit in its annual operation, the profit of the apartment units produce annual profits of approximately one million dollars. The cash surplus of Friendship Village in 1994 was \$4.8 million, and is projected to increase to \$17 million in 2004.

Friendship Village asserts the surplus is necessary to meet the overall future needs of its life care community. They believe, without offering specific evidence, a point will come when the debt service of the overall operation will come into balance with its cash reserves. Nevertheless, the cash reserves in the year 2005 are projected to be \$25 million.

Additionally, Friendship Village argues the cash reserve is necessary to maintain the integrity of "life care" contracts of its residents. These contracts allow apartment residents to transfer to the health center and receive nursing home services when they are no longer able to live independently. However, the level of services is far from complete. Friendship Village Health Care Services does not include hospitalization, personal physician services or medications. Residents are responsible to provide payment for these services. Thus, the life care contract is more compatible with a nursing home care arrangement, not a life time health care arrangement. In the

end, the Friendship Village arrangement parallels the risk sharing provided by a health care insurance contract.

Friendship Village does provide some discounts for residents entering the apartments, but they amount to only around one percent, and only a few qualify. Its annual contributions are merely a fraction of its gross revenues. The endowment or entrance fee, as well as the monthly fees, are excluded from consideration as gifts or donations. *See Holland Home v. Grand Rapids*, 557 N.W.2d 119, 125 (Mich. App. 1996).

It is also important to consider that Friendship Village does not provide gratuitous care for its apartment residents in return for the fees paid by the residents. Numerous health care services are available to residents, but at an additional cost. The average monthly costs of an apartment resident is \$1652.

Our critical inquiry is the use of the property, not the use of funds derived from the property. With respect to the property housing the apartments, it is not used for charitable purposes. *See Iowa West Racing Ass'n v. Iowa Dep't of Revenue*, 421 N.W.2d 880, 882 (Iowa 1988). The apartments provide no gratuitous or partial gratuitous care, but simply provide contractual services in exchange for fair, if not substantial, compensation.

We reverse the district court, and affirm the decision of the Board of Review of Black Hawk County. Costs assessed to Friendship Village.

REVERSED.