



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

WAGGONER CARR
ATTORNEY GENERAL

July 24, 1964

Honorable Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Opinion No. C-286

Re: Exemption of
devise and be-
quest to a
charitable or-
ganization un-
der submitted
facts.

Dear Mr. Calvert:

The question you have submitted involves the fol-
lowing provisions of Article 14.06, 20-A, Tax.-Gen.,
Vernon's Civil Statutes, which read as follows:

"If passing to or for the use of
the United States, to or for the use of
any other person or religious, education-
al or charitable organization or
institution, or to any other person,
corporation or association not included
in any of the classes mentioned in the
preceding portions of the original Act
known as Chapter 29 of the General
Laws of the Second Called Session of
the Thirty-eighth Legislature, the
tax shall be:

". . .

"Provided, however, that this Art-
icle shall not apply on property pass-
ing to or for the use of the United
States, or to or for the use of any
religious, educational or charitable
organization, incorporated, unincor-
porated or in the form of a trust, when
such bequest, devise or gift is to be
used within this State. The exemption
from tax under the preceding provisions
of this Article shall, without limit-
ing its application under other appro-
priate circumstances, apply to all or
so much of any bequest, devise of
gift to or for the use of the United

States, or a religious, educational or charitable organization, which is, in writing and prior to the payment of the tax, irrevocably committed for use exclusively within the State of Texas or transferred to a religious, educational or charitable organization for use exclusively within this State.

"Provided, further, that if the property so passing is to or for the use of a religious, educational or charitable organization which conducts its operations on a regional basis, one such region of which includes the State of Texas, or any part thereof, then a bequest, devise or gift to be used within such region shall be deemed to be used within this State. For purposes of this paragraph a region shall comprise not more than five contiguous states, either in whole or in part, one of which is the State of Texas. For purposes of this paragraph, a religious, educational or charitable organization shall include, but not be limited to, a youth program of physical fitness, character development, and citizenship training or like program.

"Provided, further, that this Article shall not apply to property passing to or for the use of any religious, educational or charitable organization, incorporated, unincorporated or in the form of a trust, if (either at the time the property passes or at any time prior to the payment of the tax) the laws of the jurisdiction under which such organization is organized or is operating provide an exemption from death tax of any character with respect to property passing (1) to or for the use of such an organization or (2) to or for the use of such an organization organized or operating

within the State of Texas, or (3) to or for the use of such an organization organized or operating within any other jurisdiction which grants a reciprocal exemption. For the purposes of this paragraph, jurisdiction means any state or territory of the United States or the District of Columbia."

We quote the following excerpts from a letter which was submitted to you in connection with gaining an exemption under the above quoted provisions of Article 14.06.

"Our case in point is the estate of F. W. Dye, deceased, who died on March 15, 1964, a resident of Dallas, Texas. In the Third Codicil to his Last Will and Testament, Mr. Dye bequeathed the residue of his estate to the F. W. and Bessie A. Dye Foundation, a Texas non-profit corporation chartered in 1961 which is a charitable and educational organization exempt from federal income tax under Section 501(c)(3) of the 1954 Internal Revenue Code. A copy of this Codicil which has been admitted to probate by the Probate Court of Dallas County is enclosed for your reference.

" . . .

"You will note that Section II of the Codicil, relating to Section V of the Will, provides for three-fourths of the bequest to be used exclusively in the State of Texas; however, there is no provision that the remaining one-fourth must be used outside of Texas. Seemingly, under the second paragraph of Article 14.06, the trustees of the F. W. and Bessie Arabella Dye Foundation would cause this one-fourth to be exempt from

the Texas inheritance tax by filing a written irrevocable commitment for the use of the one-fourth exclusively within the State of Texas at any time prior to the payment of inheritance tax. The other three-fourths would automatically be excluded from taxation by the last clause of the last sentence of such paragraph inasmuch as same has been transferred to a religious, educational, or charitable organization for use exclusively within the state."

An exemption could be obtained for one-fourth of the devise and bequest by irrevocably committing it to use within this state at any time prior to the payment of the tax. The statute is plain and unambiguous in this respect.

We quote further from the aforementioned letter with regard to exemption under the third paragraph of Article 14.06.

" . . . Moreover, the third paragraph of Article 14.06 would provide an exemption from inheritance tax of the one-fourth since same is bequeathed to a religious, educational or charitable organization which conducts its operation on a regional basis consisting of not more than five contiguous states, one of same being the State of Texas. The F. W. and Bessie Arabella Dye Foundation, being a Texas non-profit corporation, has heretofore conducted its operation only in the States of Texas and Arkansas. We assume that if an exemption were claimed under the third paragraph of Article 14.06, the trustees of the Foundation would still be authorized to use the one-fourth bequest in three additional contiguous

states (for example- Oklahoma, Missouri and Louisiana) without violating the terms of this exemption."

Exemption could be obtained under the third paragraph of Article 14.06 if the appropriate commitment is executed by the Foundation. This office has passed upon a similar question in Opinion No. WW-1141, a copy of which is attached hereto and made a part of this opinion for all purposes.

We again quote from the letter attached to the request for an opinion of this office with regard to exemption from inheritance taxes of the devise and bequest in question.

"Our problem arises under the fourth paragraph of Article 14.06 wherein an exemption is provided for religious, educational or charitable organizations operating in states which provide reciprocal exemptions for Texas charities. Is it possible that an exemption may be had under Article 14.06 for the one-fourth bequest if the trustees of the Foundation should file an 'irrevocable commitment' in writing and prior to the payment of the tax, stating that the bequest, if not used in three additional contiguous states not including Texas and Arkansas, will be used only in states which provide reciprocal exemptions for organizations operating within the State of Texas?"

That provision of the fourth paragraph of Article 14.06 expressly provides exemption for "an organization charitable organized or operating within any other jurisdiction which grants a reciprocal exemption." (Emphasis supplied.) In view of the plain language of this provision as to operation alone effectuating exemption in jurisdictions which grant reciprocal exemptions, and for the same reasons exemption was allowed in Opinion No. WW-1141

(see particularly paragraph 2 at page 7 of Opinion No. WW-1141), we have concluded that a properly drawn commitment in line with the terms of this last quoted provision would be sufficient to effectuate exemption.

S U M M A R Y

Under submitted facts, a devise and bequest to a charitable non-profit corporation may be exempt from inheritance taxes pursuant to the provisions of Article 14.06, Title 122A, Tax.-Gen., V.C.S.

Yours very truly,

WAGGONER CARR
Attorney General of Texas

By:

Marietta McGregor Payne
Marietta McGregor Payne
Assistant Attorney General

MMP/sh
APPROVED:

OPINION COMMITTEE:
W. V. Geppert, Chairman
W. E. Allen
Arthur Sandlin
Cecil Rotsch
Pat Bailey

APPROVED FOR THE ATTORNEY GENERAL
By: Stanton Stone