

**Wisconsin Association of Homes and Services for the Aging, Inc.**  
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October 7, 2004

Laura Rose, Deputy Director  
Legislative Council  
One East Main Street, Suite 401  
P.O. Box 2536  
Madison, WI 53701-2536

Subject: Legislative Council Special Committee on Tax Exemptions for Residential Property  
(Columbus Park)

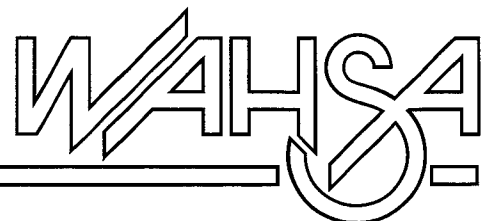
Dear Laura:

Please forgive the amount of background material enclosed with this letter but after participating in legislative discussions on the property tax exemption of benevolent associations for the past 14 years, a lot of material accumulates.

The purpose of sharing this information is to attempt to give you a sense of where WAHSA members historically have been on this issue and where I assume we'd like to proceed. I say assume because my membership has yet to deviate from its historical position to maintain the status quo, although they continue to review and evaluate proposals as offered. WAHSA members believe the status quo not only is defensible; it is sound public policy based on a policy decision adopted in 1972 by the Internal Revenue Service (IRS) that classifies the elderly as a charitable class and relief of their distress, regardless of their financial considerations, as a charitable activity. In the 14 years this issue, in various forms, has been before the Legislature, it never has been thoroughly discussed and debated; it neither has been voted out by a standing committee nor been subjected to a floor vote by either house of the Legislature. We relish the opportunity the special committee provides us "to make our case."

Enclosed with this letter is the following material:

- 1) A January 4, 2000 memo from WAHSA Executive Director John Sauer to Tom Ourada, the then-Executive Assistant to Department of Revenue (DOR) Secretary Cate Zeuske, on the chronology of the benevolent retirement home for the aged issue. 1997 Wisconsin Act 27 created the Benevolent Retirement Home for the Aged Task Force; Tom Ourada served as facilitator to the Task Force. In the enclosed memo, WAHSA provides Ourada with our recollection of this issue's chronology; the memo has been updated to bring us to today.



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- 2) The 10-member Benevolent Retirement Home for the Aged (BRHA) Task Force was comprised of five representatives of not-for-profit long-term care organizations and five representatives of either municipal governments or for-profit providers. A 5-5 deadlock ensued throughout the discussions. The final reports of the two “camps” are enclosed (Only a summary of the “Government-5 Report” is enclosed. If you would like, we can provide the entire 116-page report, although we assume the report’s author, Gregg Hagopian, already has done so).
- 3) The position outlined in the not-for-profits BRHA report is based on the community benefit standard the IRS utilizes in exempting not-for-profit organizations from federal taxation under Internal Revenue Code (IRC) 501(c). That standard is even more stringent for “homes for the aged.” Enclosed is a 2004 article “Elderly Housing,” which was published as part of the IRS’ Exempt Organizations Continuing Professional Education Technical Instruction Program for FY 2004. The article is “a review of provisions limiting and regulating organizations that provide housing for senior citizens, outlining the Service’s positions, and updating previously published articles. The article reviews current trends and discusses the handling of applications and ruling requests.”
- 4) IRS Revenue Rulings 72-124 and 79-18 outline standards which must be met by federally tax exempt “homes for the aged.” The BRHA report authored by the five not-for-profit representatives recommended using those same standards to satisfy state property tax exemption requirements.
- 5) In his September 28<sup>th</sup> testimony to the special committee, Dennis Collier of the DOR stated: “The rationale for a property tax exemption for housing leased by benevolent associations is that these associations perform the socially desirable function of providing affordable housing to needy individuals.” In his testimony to the special committee, Curt Witynski of the League of Wisconsin Municipalities, in reference to the property tax exemption for benevolent associations under s.70.11(4), Wis. Stats., stated: “The exemption was surly (sic) intended to help promote affordable housing, not to give a tax break to facilities serving middle or upper income residents.” Indeed, in the “Government-5 Report” of the BRHA Task Force, Mr. Hagopian writes in the Executive Summary: “Exemptions granted under the Milw. Protestant Line (1969 Wisconsin Supreme Court decision) definition of ‘benevolent’ hurt the very people who the legislature (sic) intended to help under 70.11(4) – the elderly amongst us who need care and don’t have the money to pay for that care.”


The problem is, the Supreme Court’s interpretation of the legislative intent of s.70.11(4), Wis. Stats., conflicts with these interpretations. According to the Supreme Court, the word “benevolent” has no built-in implication or requirement of almsgiving. While that may be where the special committee and future legislatures wish to go, that is not what the Supreme Court has interpreted the current statutory definition of “benevolent” to mean.

Enclosed is a brief overview of the judicial rulings pertaining to senior housing exemption issues prepared by Milwaukee Attorney Robert Gordon in his May 2000 presentation to the 2<sup>nd</sup> annual “Property Tax Issues for the New Millenium” seminar sponsored by the UW Law School.

- 6) Much of the discussion in both BRHA reports revolves around continuing care retirement communities (CCRC). The statute regulating CCRCs (Chapter 647, Wis. Stats.) is enclosed, as is the list of the 23 organizations which currently have permits from the Office of the Commissioner of Insurance to offer continuing care contracts. Of those 23 CCRCs, 21 are not-for-profit WAHSA members. We are not certain if Hillsboro Development Company in Middleton or Ridgeview Heights Independent Living Corporation in Reedsburg are for-profit or not-for-profit entities (although it is our understanding Hillsboro Development Company operates a not-for-profit CCRC). Please note that over half of the 23 CCRCs (12) commenced business in Wisconsin within a year of the creation of Chapter 647 by 1983 Wisconsin Act 358; two organizations actually commenced business prior to 1983. Oakwood Village Apartments has been operational since 1974; they did not procure a CCRC permit, however, until 1998. Only 6 of the 23 CCRCs have entered into the CCRC business since 1996, and 4 of those entities have parent corporations which already operated CCRCs. It would appear that Mr. Hagopian's concern that demographics will lead to the proliferation of "more deluxe senior housing facilities" may be unnecessary.
- 7) During the *Columbus Park* debate, WAHSA sought clarification from the Department of Revenue on whether the ruling applied to our members, based on the belief that WAHSA members are service providers and not lessors. The DOR never responded to the enclosed 12/16/03 memo from WAHSA Executive Director John Sauer to James Gultry of the DOR (who has since left his position). Our concern has not been assuaged by 2003 Act 195 because the "leasehold income use" language in s.70.11 remains.
- 8) Finally, there was discussion at the special committee meeting pertaining to the imposition of municipal service fees. The constitutionality of mandatory municipal service fees is discussed in the enclosed April 4, 1990 opinion (OAG 12-90) offered by then-Attorney General Don Hanaway.

Please feel free to call me if you have any questions or need further clarification.

Sincerely,



John Sauer  
Executive Director

Enclosures

cc: Mary Matthias, Senior Staff Attorney, Legislative Council