

## OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1988

**OPINION NO. 88-1 TAXATION:** A charitable corporation, which holds vacant land only for investment purposes, does not "actually occupy" that land and is not entitled to the property tax exemption contained in [NRS 361.140](#).

Carson City, March 1, 1988

Mr. John P. Comeaux, Executive Director, Department of Taxation, 1340 South Curry Street, Carson City, Nevada 89710

Dear Mr. Comeaux:

You have asked for our opinion concerning the proper interpretation of a statutory tax exemption for charitable corporations.

### QUESTION

If a corporation, which is a charitable corporation under [NRS 361.140\(1\)](#), holds property for investment purposes only, does it "actually occupy" that property as required for the property tax exemption granted by [NRS 361.140\(2\)](#)?

### ANALYSIS

[NRS 361.140\(2\)](#) provides:

All buildings belonging to a corporation defined in subsection 1, together with the land *actually occupied* by the corporation for the purposes described and the personal property actually used in connection therewith, are exempt from taxation when used solely for the purpose of the charitable corporation.

(Emphasis added.)

The term "occupy" is defined to mean:

[T]o take or enter upon possession of; to hold possession of; to hold or keep for use; to possess; to tenant; to do business in . . . (citations omitted).

Black's Law Dictionary (4th ed. 1951) at 1231.

The term "occupied" in tax exemption statutes has been construed to mean that the property must actually be used and physically occupied by the charitable corporation for the intended charitable purpose in order to qualify for the exemption. *See Society of Cincinnati v. Exeter*, 31 A.2d 52, 54 (N.H. 1943). This case involved an old building that had been moved onto land owned by a charitable corporation. At the time the lawsuit was commenced, the charitable society was not actually using the building but was holding it for eventual use for its charitable purposes. The New Hampshire tax statute exempted the real estate of charitable institutions "owned and occupied" by them for their charitable purposes. Applying the statute to the situation at hand, the New Hampshire Supreme Court stated:

The statute contemplates occupancy as more than bare possession. Such possession is not an existing use for the owner's purposes, even with a plan and purpose of future use

# Presidential Power Case Studies In The Use Of The Opinions Of The Attorney General

**Judd E. Hollander**



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