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MARKLUND CHILDREN'S HOME

REPORT ON EXEMPTION UNDER FEDERAL CODE SEC. 501(c)(3)

ARTICLES OF INCORPORATION

HILLTOP FOUNDATION, INC.

In 1954, Claire and Stanley Haverkamp started taking care of chronically ill infants and children. Mark Lund was the first child to be taken care of under this program.

On July 27, 1957, they organized an Illinois for-profit corporation known as Mark Lund Hilltop, Inc. for the purpose of operating a home to provide care for these infants and children. The present location of the facility was acquired by the corporation in 1957.

On November 28, 1960, friends of the Haverkamps formed an Illinois not-for-profit corporation known as Hilltop Foundation, Inc. The original purposes as stated in the articles of incorporation are as follows:

"To render financial aid to needy and deserving parents, relatives or legal representatives of children who are patients of Mark Lund Hilltop, Inc., a nursing home for mentally retarded children.

All such financial aid shall be rendered on a charitable basis only, and in no case will such aid be extended or made as or in the nature of sick or death benefits."

On December 14, 1964, Hilltop Foundation, Inc. amended its articles of incorporation by changing its purposes as follows:

"The purposes for which this Corporation is organized shall include: to organize, purchase and acquire, operate and maintain nursing homes for mentally retarded or physically handicapped minors."

On January 26, 1967, the articles of incorporation were further amended by replacing the above purposes paragraph with the following 8 paragraphs:

"To provide nursing home care for mentally retarded and physically deformed children, including children rendered mentally or physically unfit from abuse at the hands of their parents or other persons and placed in the nursing home by order of court or otherwise;

To provide training facilities and personnel of a nature and at a level consistent with the physical and mental condition of those children found to have training potential;

To provide for medical and psychological testing and evaluation services to determine the training potential of deformed and defective children;

To provide facilities and, with the prior consent of parents, guardians, or other competent authority, subjects for medical, physical, physiological, biological, genetic and psychological investigation of the causes and the correction potential of mental and physical defectiveness in new born and young children;

To provide the described services and facilities as a charitable undertaking without reference to race or religion, and in no event as or in the nature of sick or death benefits, but with the right to charge the value thereof, in full or in part, to the parents, guardians, or other competent authority, considering the financial ability to pay by those to be charged.

To accept money and other forms of property of every nature and description by gift or otherwise;

To provide a source and means of paying for the described services and facilities rendered to those children whose parents, guardians, or other proper authority are unable to pay therefor, in full or in part;

To acquire by purchase, gift or otherwise, real estate and personal property suitable for and consistent with the described services and facilities."

On October 30, 1967, the articles of incorporation of Hilltop Foundation, Inc. were again amended to provide a dissolution article under the Internal Revenue Code Section 501(c)(3) as follows:

"Upon the dissolution of the Corporation, all assets remaining after the satisfaction of liabilities and not held upon a condition requiring return by reason of such dissolution, shall be transferred or distributed to corporations or other organizations engaged in activities similar to the activities of this Corporation. Such corporations or organizations to which such transfers or distribution shall be made shall be then exempt under present Section 501(c)(3) of the Internal Revenue Code of 1954 or to a Federal, state or local government for public purposes."

On December 13, 1967, IRS issued a determination letter to Hilltop Foundation, Inc. declaring the not-for-profit corporation to be "exempt from Federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code." It also stated in the letter that the purpose of the corporation is charitable.

On October 1, 1968, the assets of the for-profit corporation, Mark Lund Hilltop, Inc. were purchased by Hilltop Foundation, Inc., the non-profit corporation, for the purpose of operating the home as a charitable organization exempt from Federal income tax under Code Section 501(c)(3).

In 1977, IRS came in and reviewed Hilltop Foundation, Inc.'s Form 990 for the fiscal year ended September 30, 1976. The agent thoroughly examined all of the corporation's books and records including the articles of incorporation as amended, and the then current bylaws dated 6/23/76.

On January 31, 1978, IRS issued a letter to Hilltop Foundation, Inc. stating:

"We are pleased to tell you that as a result of our examination for the above period we will continue to recognize your organization as tax-exempt."

This is the only time that IRS has examined the corporation's Form 990.

On February 3, 1981, the articles of incorporation of Hilltop Foundation, Inc. were amended to change the name of the corporation to Marklund Home, Inc.

On July 16, 1985, the articles of incorporation of Marklund Home, Inc. were amended to change the name of the corporation to Marklund Children's Home.

On December 4, 1985, Marklund requested copies of the documents in the Secretary of State's office in its files on Marklund. The copies received from the State on December 18, 1985 were the same as the documents outline above. This means that outside of the 2 changes in the organization's name, no amendments to the articles of incorporation have been filed with the Secretary of State since those filed up to and including October 30, 1967.

BYLAWS

CHANGES IN THE BYLAWS DATED 4/11/83, 4/3/84 and 8/18/85

The bylaws as amended on 6/23/76 were substantially revised on 4/11/83 and further revisions were made on 4/3/84 and 8/18/85. The revisions that affect the corporation's tax-exempt status were made in Article I on the purposes of the corporation, and in new Article IX, Section 11 on the dissolution of the corporation.

The purposes in Article I were reworded into 4 paragraphs (a) through (d) in place of the 8 paragraphs in the 6/23/76 Article I, and a short tax-exempt paragraph was added after paragraph (d).

The Section 501(c)(3) dissolution Article XIV of the 6/23/76 bylaws was eliminated, and Article IX, Section 11 on dissolution, merger and acquisition was substituted in the 8/18/85 revised bylaws. None of the paragraphs in Article IX, Section 11 contain any reference to the Code Section 501(c)(3) dissolution paragraph or to the Illinois General Not For Profit Corporation Act dissolution paragraph.

Both of these paragraphs require that upon dissolution, the assets of a charitable organization must be transferred or distributed to a similar organization.

Article I and Article IX, Section 11 of the 8/18/85 revised bylaws read as follows:

Article I Purposes:

- "(a) To provide high quality lifetime care for developmentally disabled children regardless of race, color, creed, sex or ability to pay;
- (b) To support appropriate educational activities related to the care of the seriously developmentally disabled child;

- (c) To promote the general understanding of the handicapped through volunteerism and community inservicing as appropriate;
- (d) To the extent permitted by law to do everything necessary or proper for the carrying out of the foregoing purposes.

The corporation is organized as a not-for-profit corporation under the laws of the State of Illinois and is tax-exempt from Federal Income Tax under Section 501(c)(3) of the Internal Revenue Code."

Article IX Section 11 Dissolution, merger, acquisition, etc.

"The Board of Directors of the Corporation may, with prior approval of the voting member of the Corporation:

- (a) Adopt a plan of dissolution of the Corporation;
- (b) Authorize the Corporation to engage in, or enter into, any transaction providing for the sale, mortgage or other disposition of all or substantially all of the assets of the Corporation;
- (c) Adopt a plan of merger or consolidation of the Corporation with another Corporation;
- (d) Organize or acquire, or authorize the organization or acquisition of, any subsidiary or affiliate of the Corporation ("affiliate" shall include any corporation, association, partnership, trust, joint venture, or other entity directly or indirectly controlling, controlled by, or under common control with the Corporation); or
- (e) Alter or amend the Articles of Incorporation of the Corporation."

CONCLUSIONS

The bylaw changes as of 8/18/85 (a) through (d) in the purposes of the corporation in Article I appear to conform to Code Section 501(c)(3) because IRS considers a health care purpose to be a charitable purpose.

The omission of the dissolution paragraph under Code Section 501(c)(3) as outlined on page 3 of this report, may jeopardize Marklund's tax-exempt status with IRS because one of the organizational requirements under that Code section is that the articles of incorporation must provide that the organization's assets will be dedicated to an exempt purpose.

This not only covers the use of the assets for operational purposes, but also the disposition of the assets upon the dissolution of the corporation. The organization's bylaws must not be in conflict with the articles of incorporation.

The Illinois General Not For Profit Corporation Act also has a similar dissolution paragraph as follows:

P45 Distribution of Assets.

"(c) Assets held for a charitable, religious, eleemosynary, benevolent, educational or similar use, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in the Act;"

The bylaw changes in regard to the distribution of the corporation's assets upon dissolution appear to be in conflict with the corporation's articles of incorporation, because the revised bylaws have no restrictions on the distribution of the corporation's assets upon the dissolution of the corporation.

RECOMMENDATIONS

1. The short paragraph in Article I of the bylaws following paragraph (d) of the purposes should be designated as item (e) with the following or similar wording:

"(e) Tax-Exempt Status. The corporation is being organized as a not-for-profit corporation under the General Not For Profit Corporation Act of the State of Illinois for charitable and educational purposes, and under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended."

2. Article IX, Section 11 of the bylaws should be revised to conform to the dissolution provisions of Code Section 501(c)(3) and the Illinois General Not For Profit Corporation Act.

3. A certified parliamentarian (an expert in parliamentary procedure) should then review the bylaws and make any necessary corrections so that they will be in accordance with accepted parliamentary procedures, organization, and responsibilities of the officers, committee members and board members.

The bylaws should be relatively brief and broad enough to cover various situations so that they need not be changed without a very good reason, and never on an annual basis. This will promote the stability and growth of the organization.

Standing rules should be used for details not covered in the bylaws which may be temporary and subject to revision as circumstances require such changes.

4. The corrected draft should then be reviewed by Marklund's attorney for any further revisions in accordance with the law.
5. After all of the reviews and corrections have been made Marklund's board should vote its approval of the revised bylaws.
6. The revised bylaws should then be submitted to the Healthcorp board for approval.
7. After all of the approvals have been made, Form NP-35, Articles of Amendment to the Articles of Incorporation should be filed with the Secretary of State of Illinois to amend the purposes article of incorporation. (The dissolution article under Code Section 501(c)(3) is already a part of the articles of incorporation as amended, and no further action would be required on this article).
8. When the certificate for the articles of amendment is received from the Secretary of State, it must be recorded with the DuPage County Recorder of Deeds within 15 days of receipt, or as soon thereafter as possible.
9. The articles of incorporation as amended and the revised bylaws should be published in a printed form. Copies should be provided to each board member, officer and committee member for their permanent files.
10. A copy of the published articles of incorporation and bylaws should then be submitted to IRS for approval under Code Section 501(c)(3).

Note: IRS Form 990, which is filed annually by Marklund requires an answer to the following question:

Page 4, Question 77: "Have any changes been made in the organizing or governing documents, but not reported to IRS? If 'yes', attach a conformed copy of the changes."

DEFINITIONS

1. Articles of Incorporation. Consist of the original articles of incorporation together with any amendments thereto, and any articles of merger or consolidation if applicable.

This is a legal document through which a corporation is formed. It is sometimes referred to as the "charter" and it is issued by a sovereignty. A corporation cannot exist until the charter grants it such authority. In Illinois, it is Form NP-29.

In Illinois, any changes in the corporate name, duration or purpose of the organization will require that the articles of incorporation be amended on Form NP-35.

2. Bylaws. The bylaws of an organization are the code or codes of rules adopted for the regulation or management of the affairs of the corporation. The bylaws determine the rights and duties of the members with reference to the internal control of the corporation and the management of its affairs.

A bylaw is an agreement or contract between the corporation and its members to conduct the corporation affairs. The bylaws include all regulations of the corporation until they are repealed. They are the continuing rules for the governing of the corporation and its officers, and they must not be inconsistent with the law or with the articles of incorporation.

Initial bylaws are adopted by the Board of Directors and the board has the power to alter, amend or repeal them unless otherwise provided in the articles of incorporation or in the bylaws.

3. Corporate Minutes. The minutes of each meeting of the members or the directors of a corporation are the official records of the corporation's transactions. They are kept in a minute book, and the corporation's secretary has the responsibility for preparing and maintaining them.

Minutes of corporate meetings are prima facie evidence of what happened at the meeting.

INTERNAL REVENUE CODE SEC. 501(c)(3) REQUIREMENTS FOR EXEMPTION

An organization qualifies for exemption as a Code Sec. 501(c)(3) organization if it meets the following three specified requirements:

THREE REQUIREMENTS:

- (1) The organization must be organized and operated exclusively for exempt purposes;
- (2) The organization must serve a public interest rather than a private interest; AND
- (3) The organization must not carry on propaganda, influence legislation, or intervene in political campaigns on behalf of candidates.

ADDITIONAL TESTS:

(1) Organizational test:

The organization's articles of incorporation must:

- (a) Limit the purposes of the organization to one or more exempt purposes;
- (b) State that the organization is being formed or organized for one or more of the exempt purposes mentioned in Code Section 501(c)(3);

AND

- (c) Provide that the organization's assets will be dedicated to an exempt purpose.

(2) Operational test:

An organization is regarded as operated exclusively for one or more exempt purposes only if:

- (a) It engages primarily in activities that accomplish one or more of the exempt purposes specified in Code Sec. 501(c)(3);
- (b) Only an insubstantial part of its activities is not in furtherance of an exempt purpose;
- (c) Its net earnings do not inure in whole or in part to the benefit of private shareholders or individuals;
- (d) It is not an "action" organization;

AND

- (e) It serves a public, rather than a private, purpose.

EBERHARD S. BLANCK & COMPANY

Genevieve H. Duffin, CPA

- Sources: A Guide for Organizing Not-For-Profit Corporations,
Jim Edgar, Secretary of State of Illinois, Sept. 1985
- General Not For Profit Corporation Act, 1985, Jim Edgar,
Secretary of State of Illinois, Apr. 1985
- Copies of Marklund Children's Home articles of
incorporation and articles of amendment thereto
that are on file with the Secretary of State of
Illinois
- Copies of Marklund Children's Home bylaws as amended
6/23/76, 3/22/82, 4/11/83, 4/3/84, and 8/18/85
- Commerce Clearing House, Inc. Tax Guide, 1985 on Code
Section 501(c)(3)
- Nonprofit Enterprises: Law and Taxation, 1985 published
by Callaghan & Company