

TAXATION: Relating to exemption of charitable organizations.

June 22nd, 1934

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FILED

Mr. Edward Schlichter, Secretary
Salisbury Lodge 236, I.O.O.F.,
Salisbury, Missouri.

Dear Sir:

This Department is in receipt of your letter of June 11th,
requesting an opinion, wherein you stated in part as follows:

"I am writing you in regard the matter of taxing our lodge property here, which I mentioned to you some time ago. This is I.O.O.F. property and this property went tax exempt for years, and it is just in the last few years that we are being taxed. Now I want to make it clear to you that the rent money that we collect downstairs goes into the same place that the dues from the members goes; that is for the relief of the sick, to bury the dead and relief of the orphan children, and a certain part of all this money goes to maintain a home for the old people and educate the orphans which possibly would be a charge and have to be maintained by the taxpayers of the State of Missouri. That is why we claim we should be tax free as this is strictly a charitable institution and there is no commercialism in anything which we do, but all the money we take in goes into the same treasury and for the same cause."

Missouri constitutional and statutory provisions exempt from taxation property used exclusively for charitable purposes. Article X, Section 6 of the Missouri Constitution exempts certain property from taxation and reads as follows:

"PROPERTY EXEMPT FROM TAXATION.--The property, real and personal, of the State, counties and other municipal corporations, and cemeteries

shall be exempt from taxation. Lots in incorporated cities or town, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, may be exempted from taxation, when the same are used exclusively for religious worship, for schools, or for purposes purely charitable; also, such property, real or personal, as may be used exclusively for agricultural or horticultural societies: Provided, that such exemptions shall be only by general law."

Section 9743, Revised Statutes of Missouri, 1929 sets out the property exempt from taxation and reads in part as follows:

"* * * sixth, lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, when the same are used exclusively for religious worship, for schools or for purposes purely charitable, shall be exempted from taxation for state, county or local purposes."

It is a cardinal principle that statutes exempting property from taxation must be strictly construed against those claiming the exemption and as stated in the case of Fitterer vs. Crawford, 157 Mo. 51, l.c. 58, wherein it was stated:

"In the construction of laws exempting property from taxation it is a cardinal principle that they must be strictly construed. As a rule all property is liable to taxation, exemption the exception, and it devolves upon the person claiming that any specific property is exempt to show it beyond a reasonable doubt."

Vol. 2, Cooley on Taxation, (4 Ed.) pp. 1403-1408, states the rule on strict construction as it relates to exemption from taxation, in part as follows:

"An intention on the part of the legislature to grant an exemption from the taxing power of the state will never be implied from language which will admit of any other reasonable construction. Such an intention must be expressed in clear and unmistakable terms, or must appear by necessary implication from the language used, for it is a well-settled principle that, when a special privilege or exemption is claimed under a statute, charter or act of incorporation, it is to be construed strictly against the property owner and in favor of the public. This principle applies with peculiar force to a claim of exemption from taxation. Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and an alleged grant of exemption will be strictly construed and cannot be made out by inference or implication but must be beyond reasonable doubt. In other words, since taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it. Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the state has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favor would be extended beyond what was meant."

In the case of *Odd Fellows vs. Redus*, 78 Miss. l.c. 355; 29 So. 163, the Odd Fellow's Lodge erected a two story building, used a part thereof for its lodge room and rented a part thereof for a store and dental office. The Court held that the building was subject to taxation, and concluded the opinion in that case in the following language:

"The lodge claims that this property is exempt from taxation under Section (Paragraph) 3744, Code, which exempts all property, real or personal, belonging to any charitable society, used exclusively for the purposes of said society, and not for profit. The exemption cannot be maintained. It does not come within the letter

of the act. The property is used for profit, and not for charity, and so cannot be exempt. It is said in argument that the income is used for charity and that makes it the same in effect as if the property itself was used for charity. But that is not the letter of the law, or its spirit."

Again in the case of Ft. Des Moines Lodge, I.O.O.F. vs. Polk County, 56 Iowa, l.c. 36; 8 N.W. 688, the Odd Fellows conducted and organization for charitable purposes and raised a fund to aid in such purposes. The money was used to purchase a business block in Des Moines and the income therefrom used to aid widows and orphans of deceased members of said lodge. In holding that the property was subject to taxation, the Supreme Court of Iowa said:

"* * * The property being leased for business purposes and an income obtained therefrom, its status as taxable property is thereby fixed."

In the case of The Georgia Female Seminary, the same being a charitable organization, but having a house and lot that was rented and the rent used to aid in the charitable work of the institution, the Court held the property subject to taxation and said:

"* * * As we have seen, it is the use made of the property and not the use made of the income from which its taxability or non-taxability must be determined." Mundy v. Van Hoose 104 Ga. l.c. 300; 30 S.E. 787.

The Fifteenth Ward Relief Society was a charitable organization, ministering to the poor, sick and destitute members of the community. It owned a two story building, the upper floor of which was used continuously by its members in the furtherance of its charitable purposes; but the lower floor contained two store rooms which were rented out and the money used for charitable purposes. After citing numerous authorities in support of its position, the Utah Supreme Court stated:

"Only such of the society's property, therefore as is occupied and used 'exclusively' for charitable purposes is exempt from taxation. * * * The exemption does not extend to that portion not appropriated by the society to

its own use but held as a source of revenue." Parker vs. Quinn, 23 Utah l.c. 339; 64 Pac. 962.

In the case of State ex rel. vs. Gehner, 11 S. W. (2d) 30, l.c. 37, the Missouri Court said:

"* * * the test for tax exemption is not the number of good purposes to which a building may be put, nor the amount of good derived by the general public in the operation of such purposes, but whether the building is used exclusively for religious, educational or charitable purposes. If it is used for one or more commercial purposes, it is not exclusively used for the exempted purposes, but is subject to taxation."

Again in the case of State ex rel. v. Y.M.C.A. 259 Mo.233; 168 S.W. 589, the Court said:

"The facts above recited are admitted by stipulation to be correct. On those facts the defendant contends that its real estate is not subject to taxation. It asserts that renting fifteen per cent of the space in its buildings for commercial purposes, while the remaining eighty-five per cent is devoted to the purposes of the said association, does not render its real estate subject to general taxes. * * * Appellant's learned counsel cite cases from other jurisdictions where it has been held that only such per cent of a building owned by a religious corporation as is used for commercial purposes shall be subject to taxation, but we cannot bring ourselves to believe that any such intent was in the minds of the framers of our Constitution."

The ruling in the case of Fitterer vs. Crawford, 157 Mo. 51, l.c. 64, holds that a building owned by a Masonic lodge on account of the charitable designs and practices of such lodge is exempt from taxation so long as it is used exclusively for such lodge purposes but when two of the floors of such building are rented for commercial purposes then the entire building is subject to taxation. In deciding that case, it was said:

"There is a very material difference between the 'use of a building exclusively for purely charitable purposes', and renting it out, and then applying the proceeds arising therefrom to such purposes. To rent out a building is not to use it within the meaning of the statute, but in order to use it, it must be occupied or made use of. Moreover, by leasing the property the lodge becomes the competitor of all persons having property to rent for similar purposes, and the plain and obvious meaning of the statute is that such property shall not be exempt from taxation."

Conclusion

From the foregoing, we are of the opinion as stated in the case of State ex rel. vs. Gehner, supra, that:

"The test for tax exemption is not the number of good purposes to which a building may be put, nor the amount of good derived by the general public in the operation of such purposes, but whether the building is used exclusively for religious, educational or charitable purposes. If it is used for one or more commercial purposes it is not exclusively used for the exempted purposes, but it is subject to taxation."

The Courts realize that organizations like the Salisbury lodge of I.O.O.F. relieve the taxpayers of a burden many times greater than the amount involved if the organization paid taxes on all of its property. However, the Courts feel that it is their duty to enforce the Constitution and Statute as they find the same to exist and that it does not matter how deserving an organization may be or how much good it has accomplished by the operation of its various activities, if like the Salisbury Lodge of I.O.O.F. it rents part of the property, the building is subject to taxation.

APPROVED:

Respectfully submitted,

Attorney-General

WOS-MW/mh

WM. ORR SAWYERS

Assistant Attorney-General