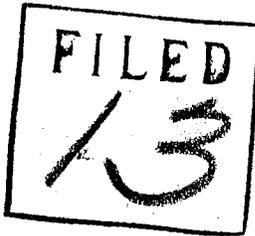


TAXES: The City of Doniphan should not pay taxes upon its
MUNICIPALITIES: city hall.



January 5, 1955

Honorable Charles B. Butler
Prosecuting Attorney
Ripley County
Doniphan, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"This is the last time I will bother you for an opinion. My term expires day after to-morrow.

"Doniphan has a city hall. It is two stories high. The lower part is rented for a drug store. Upstairs three offices are rented to private individuals. I would like to have your opinion as to whether or not the city should pay state and county and school taxes.

"In your opinion does the city have the authority to rent city property for private use? In your opinion the John Hosmer, Marshfield, Missouri, of December 20, 1954, you held that the County Court had no authority to rent space in the court house to private persons for private purposes. Why would it not apply to city property?"

In answer to your first question we direct your attention to the case of School District of Berkeley v. Evans, et al. 250 S.W. 2d. 499, at l.c. 499, 500 of its opinion in the above case, the Missouri Supreme Court stated:

"(1) Section 6 of Article 10 of the 1945 Constitution of Missouri reads as follows:

"All property, real and personal, of

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the state, counties and other political subdivisions, and nonprofit cemeteries, shall be exempt from taxation; and all property, real and personal, not held for private or corporate profit and used exclusively for religious worship, for schools and colleges, for purposes purely charitable, or for agricultural and horticultural societies may be exempted from taxation by general law. All laws exempting from taxation property other than the property enumerated in this article, shall be void.'

"It will be noted that the section of the Constitution provides that all property of the state and other political subdivisions shall be exempt from taxation. The same section provides that property used exclusively for religious worship, schools, etc., may be exempted from taxation by general law. (Italics ours.) The test to be applied to property held by the state and its political subdivisions is ownership while the test as to other exemptions which may be granted by general law is whether the property is being used for the purposes enumerated. The rule applicable in such a situation is thus stated in 61 C.J. 420, Section 455:

"* * *Where municipal ownership is made the sole test of the exemption, the purpose of the use is immaterial, especially where use is made a condition in other exemption provisions in the constitution and omitted in the provision relating to municipal corporations, and even where the exemption statute further provides that 'nothing herein contained shall be construed to exempt from taxation any part of a lot or building used for any private purpose or for profit,' where the exemption itself is construed as having no reference to city property; * * *"

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"In the case of City of Yankton v. Madison, 70 S.D. 627, 20 N.W. 2d. 371, the court reviewed this question. Note what the court said, 70 S.D. loc. cit. 631, 20 N.W. 2d. loc. cit. 372: 'Several of the states have identical or similar constitutional provisions, and they are generally construed to require the exemption of property owned by municipal corporations irrespective of use.'

"(2) Appellants in the brief concede that property legally acquired by a city cannot be taxed but it is argued that the purchase of the plant in question by the City of St. Louis was illegal and, therefore, the property is subject to taxation."

We believe the above to be decisive and that the answer to your first question is that the city should not pay taxes on the city hall.

We do not believe that your second question involves matters which properly come within your jurisdiction as prosecuting attorney and so we do not undertake to specifically answer that question. However, as perhaps being helpful in regard to it, we enclose a copy of an opinion written to Honorable Joe M. Carter, Secretary of the Chamber of Commerce, Doniphan, Missouri.

Conclusion

It is the opinion of this department that the City of Doniphan should not pay taxes upon its city hall.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Yours very truly,

HPW:mw

Enc.(9/2/38 to Joe Carter)

John M. Dalton
Attorney General