

REAL PROPERTY: Facilities owned by schools and colleges, used
SCHOOLS: exclusively as residences for students and/or
TAXATION: faculty of the school, are exempt from property
EXEMPTIONS: taxes by Section 137.100, RSMo if this use is
PROPERTY: primarily for educational purposes and not only
as housing facilities for the convenience and
benefit of the students or faculty residing
therein. The determination of what constitutes the primary use
rests upon the facts of each individual case.

OPINION NO. 115

July 3, 1967

Honorable Jack L. Yocom
Prosecuting Attorney
Green County
Springfield, Missouri 65802



Dear Mr. Yocom:

This is in answer to the request for an opinion of this office made by the former prosecuting attorney as to whether certain properties owned by the Central Bible College in Springfield, Missouri, are exempt from the assessment of property tax.

The property involved consists of fourteen residences owned by the college located immediately south of the college campus. Three of the residences are maintained for housing married students and the remaining eleven are occupied by faculty members and their families. We assume that each of the residences are single family units rather than multiple family or dormitory type buildings.

Section 6, Article X of the Missouri Constitution provides:

"Section 6. All property, real and personal, of 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."

This provision has been implemented by the enactment of

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Section 137.100, RSMo 1959, which reads:

"(5) All property, real and personal actually and regularly used exclusively for religious worship, for schools and colleges, or for purposes purely charitable and not held for private or corporate profit, except that the exemption herein granted does not include real property not actually used or occupied for the purpose of the organization but held or used as investment even though the income or rentals received therefrom is used wholly for religious, educational or charitable purposes."

Thus the question is, is the residential property owned by Central Bible College used exclusively for schools and colleges and not for private or corporate profit and not held or used for investment.

It is generally recognized that property owned by an educational institution and used to house members of the faculty or as student dormitories is exempt from taxation when this use is primarily for promoting the purpose of the institution rather than as a convenience to the faculty or the students. 84 C.J.S. Taxation, Section 288d, pp. 582-584; 51 Am.Jur. Taxation, Section 622 p. There is some conflict in the application of this rule in that some courts have held that the primary use of residential property is in furtherance of the purpose of the exempt institution while others have found that this use is only incidental, the primary use of such facilities being for the convenience and benefit of the persons occupying the buildings. See cases cited in 15 ALR2d 1060.

The former view was adopted in *Midwest Bible and Missionary Institute v. Sestric*, Mo.Sup., 260 S.W.2d 25, wherein the Court held that a building used to house eighteen women students and four faculty members and their families (who paid no rent) was exempt from the property taxes saying; l.c. 30, 31:

"The chancellor could find from this evidence that the responsibility of the faculty of an institution, such as the plaintiff Institute is here shown to be, is not limited to the classroom alone. It here appears to be imperative that the more learned and mature and experienced faculty members influence and

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mold the daily thinking and conduct and like of the youthful student. When resident under the same roof those student-faculty contacts are almost constant in dormitory life and clearly are promotive of the ends sought to be achieved by plaintiff's broad school program which it is the expressed constitutional and statutory policy of this State to encourage. It may be neither assumed nor concluded that under the instant facts the educational process of the plaintiff Institute makes no progress in the buildings here in issue. The contrary clearly and affirmatively appears. These students there live and study, prepare assignments, make research, have faculty conferences and meet in discussion groups with faculty guidance. We think the above constitutional provision must be so construed and the above statute so applied under the instant facts as to exempt the properties here in issue as portions of the entire integrated system of the plaintiff Institute, and not merely to exempt the buildings located at 3964 Washington Boulevard where classes are held and lessons are recited. State ex rel. Spillers v. Johnston, supra."

This holding was based in part upon the decision in State ex rel. Spillers v. Johnston, Mo.Sup., 113 S.W. 1083, in which a Kemper Military Academy building at Boonville, Missouri, which housed 110 cadet students, 10 faculty officers, 15 servants and defendant and his family to be tax exempt.

In an older case, Bishop's Residence Co. v. Hudson, Mo.Sup., 4 S.W. 435, 91 Mo. 671, the Court held property used as a place of residence, rent free, for such Bishops of the Methodist Episcopal Church as might from time to time be designated to reside in the City of St. Louis, to be exempt from property taxes.

Similarly, on August 19, 1953, our office issued opinion numbered 31 to the Honorable W. C. Frank, Prosecuting Attorney of Adair County, holding that a non-profit educational institution's dormitories and some other buildings used for housing facilities for its students were exempt from property taxes when no space is rented to any others for residential or business purposes and the transaction was not entered into by the colleges for investment purposes.

However the decisions we have cited have involved large

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dormitory type facilities housing a group of students and several faculty members. The reasons given for finding that these facilities are used primarily in furtherance of education rather than for the benefit of those residing therein, is that the regulation of the students by the faculty and the increased opportunities for group study and consultation with the faculty is of great aid in promoting the educational process.

This general thesis does not necessarily apply to single residence property. It is more difficult to see how furnishing a married student a house to live in provides an educational benefit superior to that obtainable in a privately owned residence equally available to such a student. The same question is also applicable to single family faculty residences. Although in the memorandum enclosed with the opinion request prepared by those seeking a tax exemption for the property, evidence was given as to the use of the faculty residences for conferences and consultations between the faculty and students, the question arises as to the availability for such conferences of faculty members living in houses other than those owned by the colleges.

This memorandum cites the recent case of Bethesda General Hospital v. State Tax Commission, Mo.Sup., 396 S.W.2d 631 in which the Court held to be tax exempt certain residential property occupied by various supervisors of maintenance and their families, a laboratory technician, a registered nurse and a house physician and family. The rationale of this holding was that these persons were key personnel, on call twenty-four hours a day, and were necessary to the efficient operation of the hospital, for the continuance of which it was likewise necessary that they be located near its grounds. This holding would not necessarily be applicable to the general question as to the exempt status of college owned residential property absent special circumstances in which the instant availability of the faculty was as necessary to the purpose of the college as are certain key personnel of a hospital.

It is well recognized that provisions exempting property from taxation should be strictly, yet reasonably construed, and each claim for exemption must rest upon the particular facts of that case. Frisco Employes' Hospital v. State Tax Commission, Mo.Sup., 381 S.W.2d 772. In cases regarding student or faculty residences, the general rule is that they are exempt under Section 137.100 if they are used primarily in furtherance of the educational purposes of the college and their use as a residence is only secondary. The application of this rule depends upon the facts in each case, which may be determined by court proceedings, or, if he so desires, by the county assessor with the advice of the prosecuting attorney. Without knowing all of the facts, this office does not feel it

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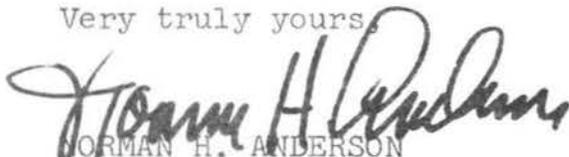
could make an accurate determination of whether specific property should be exempted from property taxes.

CONCLUSION

Facilities owned by schools and colleges, used exclusively as residences for students and/or faculty of the school, are exempt from property taxes by Section 137.100, RSMo if this use is primarily for educational purposes and not only as housing facilities for the convenience and benefit of the students or faculty residing therein. The determination of what constitutes the primary use rests upon the facts of each individual case.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John H. Denman.

Very truly yours,


NORMAN H. ANDERSON
Attorney General