

TAXATION (EXEMPTIONS):

Under Article X, Section 6 of the Constitution and Section 137.100, RSMo Supp. 1967, a building in the course of construction intended to be used for charitable purposes but not so used at the time fixed for assessment of taxes is not exempt from taxation.

OPINION NO. 307

June 25, 1970

Honorable John Crow  
Prosecuting Attorney  
Greene County Court House  
Springfield, Missouri 65802



Dear Mr. Crow:

This is in response to your request for an official opinion on the question whether real property owned by the Southwest Missouri Ecumenical Center, Springfield, Missouri, as of January 1, 1970, is subject to ad valorem taxes. You present your question as follows:

"If a not-for-profit corporation acquires real property for the purpose of constructing facilities thereon which, when completed, will be actually and regularly used exclusively for religious worship and purposes purely charitable and not held for corporate profit, but if said facilities are still under construction and not yet occupied on January 1, 1970, and if no other use is being made of said property on said date except the construction of said facilities, is the real property exempt from taxation for the year 1970 by virtue of Section 137.100 (5), RSMo 1959?"

Constitutional exemption from taxation of certain property is provided for in Article X, Section 6 as follows:

"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."

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Implementing this constitutional provision is Section 137.100 (5), RSMo Supp. 1967, which provides as exempt from taxation for state, county or local purposes:

"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."

The right to exemption is grounded upon the use made of the property sought to be exempted. We must therefore consider whether the use which merits the exemption is a present use or whether the right of exemption carries with it, as an incident, the opportunity to adapt and fit the property for use within a reasonable time by the construction of a building to be used exclusively for purposes purely charitable.

We note that while the precise question you present has not been directly before the court, the broad question was discussed by the court in relation to taxes assessed on property owned by a charitable corporation that claimed its property was exempt from taxation under Article X, Section 6 of the Constitution and Section 137.100, RSMo Supp. In *Bethesda General Hospital v. State Tax Commission*, 396 S.W.2d 631 (Mo. 1965) the court stated, l.c. 633:

"The issue here is concerned with the words of the Constitution and statute, supra, that real property shall be exempt from taxation where it is not held for private or corporate profit, and the same is used exclusively for purposes purely charitable. The rules applicable to cases such as this are that exemption statutes are strictly but reasonably (so as not to curtail the intended scope of the exemption) construed; that the charitable use exemption depends upon the use made of the property and not solely upon the stated purposes of an organization; that each tax exemption case is 'peculiarly one which must be decided upon its own facts'; that taxation is the rule; exemption is the exception; and that claims for exemption are not favored in the law. *Midwest Bible and*

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Missionary Institute v. Sestric, 364 Mo. 167,  
260 S.W.2d 25. . . ."

The court also pointed out on pages 633-634:

". . . that the reason for state tax exemption provisions is that they are given in return for the performance of functions which benefit the public; 84 C.J.S. Taxation § 281, p. 533; that the exemption in favor of the charitable institutions is based upon the ground that a benefit is conferred upon the public by them, with consequent relief, to some extent, of the burden imposed upon the state to care for and advance the interests of its citizens. 34 A.L.R. 635. See also 51 Am.Jur. Taxation § 600, p. 583."

The public policy underlying concessions of this character is invariably based upon actual use as a presumable quid pro quo for the concession. Moreover, the fundamental rule pervading all exemptions from the general tax burdens of the state is that they are not favored in law, and will not be construed to exist unless the statutes invoked to support them express the legislative intention in clear and unmistakable terms.

The language of the statute is "actually and regularly used exclusively" for purposes purely charitable. Substantially the same language was considered by the Court of Errors and Appeals of New Jersey in Borough of Longport v. Max and Sarah Bamberger Seashore Home, 102 A. 633 (Ct.Err. & App., N.J. 1917) as follows:

"Section 3, subd. 4, Laws 1903, p. 395, as amended by chapter 278 of the Laws of 1913, exempts from taxation all buildings and land owned by charitable institutions actually used for charitable purposes at the time fixed by law for the assessment of taxes.

"The testimony shows that the petitioner acquired title to its land in Longport in the early part of 1914; that buildings were erected thereon and completed before December 31, 1914; that the institution was not actually opened and in use until July 1, 1915.

"The inquiry therefore is as to the construction of the words "actually used for charitable purposes," contained in the act of 1913.

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"'However we might feel predisposed to favor the claim for exemption in this case, we cannot but be mindful of the fact that our solution of the inquiry is not at all fancy free, but that our judgment must be guided and controlled upon the principle of stare decisis, which brings us inevitably to a denial of the validity of the respondent's claim.

"'The act of 1913, under which the tax is laid, and upon the terms of which the exemption must be demanded and supported, is not before us for the first time.

"'The case of Holy Angels v. Ft. Lee, 80 N. J. Law, 545, 77 Atl. 1035, settled the construction of the act adverse to the contention of the respondent, and the rule was there laid down that "where a building is in course of erection, intended to be used for a charitable purpose, but not actually used therefor, it is not exempt from taxation."'"

The Supreme Court of Missouri has held that a charitable use tax exemption depends upon the use made of the property and not solely on the stated purposes of an organization. St. Louis Gospel Center v. Prose, 280 S.W.2d 827 (Mo. 1955).

It appears, therefore, that in order to be exempt the property must be actually used. In the situation you present, the natural construction of the language forbids the exemption. The doubt suggested as to the taxability of property where preparations were being made before the time of assessment to appropriate and use the property for the charitable purpose is removed by the language of the statute and the words "actually and regularly used exclusively" for the charitable purpose. The most that can be said in this situation is that the property was intended to be used for a charitable purpose. Inasmuch as it was not used for a charitable purpose on January 1, 1970, it is not exempt from taxation for the year 1970.

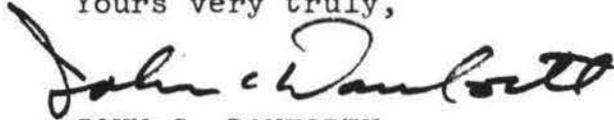
#### CONCLUSION

It is the opinion of this office that under Article X, Section 6 of the Constitution and Section 137.100, RSMo Supp. 1967, a building in the course of construction intended to be used for charitable purposes but not so used at the time fixed for assessment of taxes is not exempt from taxation.

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The foregoing opinion, which I hereby approve, was prepared by my Assistant, L. J. Gardner.

Yours very truly,

A handwritten signature in cursive script, reading "John C. Danforth". The signature is written in dark ink and is positioned above the typed name.

JOHN C. DANFORTH  
Attorney General