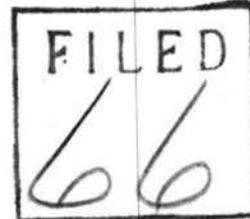


TAXATION: Part of cemetery tract that is used for caretakers house is not taxable.

June 6, 1940

6-7

Hon. Martin L. Neaf  
Assessor, St. Louis County  
Clayton, Missouri



Dear Sir:

This will acknowledge receipt of your letter of May 14, 1940, involving whether or not a portion of Salem Cemetery was exempt from taxation while owned by the Cemetery Society. It appears, from the information furnished us, that in 1853 the Trustees of the Salem Methodist Episcopal Church acquired four acres of land, at what is now 6800 Natural Bridge Road, and set the same aside for use as a burial ground. Three acres of this tract has been used throughout the years for interment of the dead. One acre of this tract has been occupied by the home of the caretaker. On December 1, 1939, the trustees of the Cemetery Society sold the one acre on which stood the caretaker's house and the purchaser has retained a portion of the purchase price until such time as it may be ascertained whether this one acre was exempt from taxation during the years it was owned by the Cemetery Society.

Section 6, Article 10 of the Missouri Constitution provides:

"The property, real and personal, of the State, counties and other municipal corporations, and cemeteries, shall be exempt from taxation."

This provision of the Constitution as it relates to cemeteries has been before the courts of the state only three times.

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It was before the court in State ex rel. v. Casey, 210 Mo. 235, 251, where this construction was placed upon it:

"In that section the words, 'the property, real and personal, of the State, counties and other municipal corporations,' are separate from and have no connection with the words 'and cemeteries,' which follow. The exemption extends to 'cemeteries' as such, \* \* \* \*."

State ex rel. v. Wesleyan Cemetery Association, 11 Mo. App. 561, held that land used as a cemetery for many years and in use as such at the time the taxes were assessed and sued for was exempt from taxation. No facts were disclosed in that case which make it comparable to our question.

National Cemetery Association v. Benson, 129 S. W. (2d) 842 (Mo. Sup.) is a case somewhat similar to the instant case. In that case a business and manufacturing corporation, the plaintiff, conveyed to the Valhalla Cemetery Association, a non-profit association organized for the purpose of maintaining a cemetery, the gates and fences, hedges, avenues, driveways, walks, trees and other improvements in a 194 acre tract intended for a cemetery tract and retained title to unplatted portion of the tract. The title was to remain thusly until nine-tenths of the area was sold as burial lots, then the whole would pass to the cemetery association. Sales by plaintiff for non-burial purposes eventually reduced the area to 153 acres. Of this amount 65 acres was unplatted and no burial had been made in this unplatted portion. It was this 65 acres that was assessed for taxation purposes. The court, in the opinion, approved the construction placed on Section 6, Article 10 in State ex rel. v. Casey, supra, and said, l. c. 844:

"We must determine therefore what is included under the word 'cemetery.'  
A cemetery has been defined to be:  
'A place or ground set apart for the burial of the dead, orig. a Roman catacomb, later the consecrated yard of a

church so used, now any burial ground, esp. on a large scale; a graveyard; a necropolis.' (Webster's New International Dictionary, 2d Ed.) 'A cemetery is a place set apart, either by municipal authority or private enterprise, for the interment of the dead.' (10 Amer. Juris., Cemeteries, Sec. 2, p. 487.) To invoke the exemption the property must have been 'set apart' for the burial of the dead. We are not concerned with that part of the land used for avenues, drives and walks which are appurtenances necessary to the use and enjoyment of the lot-owners.

"We do not find a dedication either by estoppel or acts in pais for burial purposes. The land, except the Bernice Place lots, was not even platted into burial lots. The plaintiff corporation, a manufacturing and business corporation, has retained and now holds title to all the tract which has not been already sold as burial lots with the exception of the walks and drives. By the agreements with the association it recites a 'contemplation' of filing 'additional plats showing extensions and enlargements of said cemetery' but in no way binds itself to do so or to enlarge the cemetery."

The court held said property taxable, saying, l. c. 845:

"\* \* \* We can find nothing in the record to show that the land, assessed here has either been used as a cemetery or that active measures have been taken toward preparing it for cemetery purposes."

The decision of the court in that case is of little use in deciding the instant question because the facts are so dissimilar, but it is useful in that several unstated principles of law may be inferred from the

language used which do materially assist us in deciding our question.

It will be noted the court stated: "We are not concerned with that part of the land used for avenues, drives and walks which are appurtenances necessary to the use and enjoyment of the lot-owners." Why was not the court concerned with these? We think the reason to be, that appurtenances necessary to the use and enjoyment of the lot-owners are not taxable even though not used, and never intended to be used, for interment of the dead.

That was the rule applied by the Supreme Court of Wisconsin in *Town of Blooming Grove v. Roselawn Memorial Park Co.*, 286 N. W. 43, where the court, on a similar question, stated, l. c. 45:

"In 10 Amer. Jur. at page 487, the word, 'cemetery', is thus defined: 'A cemetery is a place set apart, either by municipal authority or private enterprise, for the interment of the dead. The term includes not only lots for depositing the bodies of the dead, but also avenues, walks, and grounds for shrubbery and ornamental purposes.'

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"Black, H. C., Law Dictionary, Third Edition, 1933, page 295, defines a cemetery as: 'a place set apart for the interment of the dead, the term including not only lots for depositing the bodies of the dead, but also avenues, walks, and grounds for shrubbery and ornamental purposes.' For same definition, see: Bouvier, Law Dictionary, Rawle's Third Rev., Vol. I, page 436, Words and Phrases, Fourth Series, Vol. I, page 372."

The same rule was applied in Texas in *Ex parte Adlof*, 215 S. W. 222, where it is stated, l. c. 223:

"\* \* \* We believe the following definition applicable to both, it may be said: 'A cemetery is a place set apart either by municipal authority or private enterprise for the interment of the dead. The term includes not only lots for depositing the bodies of the dead, but also avenues, walks, and grounds for shrubbery and ornamental purposes.'"

Note also that the Supreme Court in the Benson case (129 S. W. (2d) 1.c. 845) stated with respect to the failure of proof, that no 'active measures have been taken toward preparing it for cemetery purposes.' We take it, from this statement, that had the evidence shown that steps had been taken toward preparing the unplatted 65 acres for cemetery purposes the conclusion of the court would have been the reverse of what it was.

From this we infer the rule to be that land prepared for cemetery purposes, although no burials have been made therein, is tax exempt. Now a cemetery purpose, as above pointed out, includes all 'appurtenances necessary to the use and enjoyment of the lot-owners,' as well as burial lots.

Thus, our question seems to be: Is a caretaker, his quarters and office, an appurtenance necessary to the use and enjoyment of the lot-owners.

In State v. Lakewood Cemetery Association, 101 N. W. 161 (Minn.) "public burying-grounds" are exempted from taxation. It was contended in part that maintenance of a greenhouse by the cemetery association was not for a cemetery purpose. The court said, 1. c. 163:

"The use of a small portion thereof for a greenhouse for the purpose of growing flowers and plants to be used in beautifying the grounds, clearly, in our judgment, falls within the authority conferred upon appellant. It is a matter of common knowledge that greenhouses are maintained by many of the large cemetery

associations throughout the country, and the sale of a small amount of the surplus stock is but an incident to the general management."

We think maintenance of a caretaker's house on a cemetery plot is such a purpose that is incidental to the proper use and enjoyment of the cemetery by the lot-owners and as such it is for cemetery purposes.

A somewhat analogous situation is the exemption extended to the lands of a limited acreage used exclusively for schools. It was held that such lands were exempt even though instructors and their families resided in the school property. The court reasoned, "If the incidental use (in this instance residing in the building) does not interrupt the exclusive occupation of the building for school purposes, but dovetails into or rounds out those purposes, then there could fairly be said to be left an exclusive use in the school on which the law lays hold." State ex rel. v. Johnston, 214 Mo. l. c. 663.

It appears to us that proper provision of a caretaker for the maintenance and upkeep of a cemetery dovetails into and rounds out the original purpose - the interment of the dead - and is necessarily incidental to such purpose. That this could best be done by having a caretaker on the premises will not be disputed. If the use of part of a school building for the residence of instructors does not cause said building not to be exclusively used as a school, then by the same reasoning, the use of a part of a tract of land for the caretaker does not cause said tract not to be used for cemetery purposes.

In reaching this conclusion we are aware of the holding in State v. Lange, 18 Mo. App. 468, but we do not think it decisive of our question for the reason that said decision involves the grant of tax exemption in a Legislative charter and the fact that the supposed caretaker there paid an annual rental for the premises and raised produce on the land, which he sold on the market. The court held this plot was used for the purposes of husbandry and not for cemetery purposes. Such is not the case before us.

Hon. Martin L. Neaf

(7)

June 6, 1940

Therefore, it is our opinion that the one acre tract, while owned by the Cemetery Society was used for cemetery purposes and as such was tax exempt.

We are returning herewith the deeds and certified copies of deeds, which you forwarded with your request.

Respectfully submitted,

LAWRENCE L. BRADLEY  
Assistant Attorney-General

APPROVED:

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COVELL R. HEWITT  
(Acting) Attorney-General

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