

TAXATION. : Three Story Masonic Lodge
: building having two stories rented
: commercially is not exempt from
: taxation.

November 29, 1944

Mr. Jesse A. Mitchell, Chairman
State Tax Commission
Jefferson City, Missouri

11/30

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Dear Mr. Mitchell:

This will acknowledge the receipt of your letter of November 18, requesting an opinion from this office, which is as follows:

"I am enclosing, herewith, a request from the County Assessor of Johnson County for an opinion concerning the liability for taxation of certain property in that county.

"Also, enclosed are Articles of Agreement on which this company based their claim for exemption.

"Will you kindly favor this Commission an opinion relative thereto."

Any claims of the lodge to exemption depends on a construction of Sec. 6 of Article 10 of the Constitution of Missouri and Sec. 10937, R. S. Mo., 1939. Said Sec. 6, of the Constitution provides in part as follows:

"* * * 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, may be exempted from taxation, when the same are used exclusively for religious worship, for schools, or for purposes purely charitable. * * *"

Section 10937, R. S. Missouri, 1939 contains language similar to the language quoted in Section 6 supra. In construing tax exemption provisions the rule that such provisions must be given

a strict but reasonable construction is to be applied.

From the facts you submit, it appears that the building in question is owned by a Masonic organization, that it is a three story building, that the first two floors are rented out for commercial purposes and that the top floor is used for the lodge rooms. The Articles of Agreement of the association provide that "a portion of the said buildings and grounds may be rented or leased for business purposes and the net income therefrom shall belong to said Corinthian Lodge Number 265, A. F. and A. M., De Molay Chapter Number 26 R. A. M. and Mary Commandery Number 19 K. T. but shall not inure to the pecuniary profit of the individual member thereof, * * *"

It must be noted that the Constitution and statute referred to above, exempt property from taxation if it is used exclusively for religious worship, for schools, or for purposes purely charitable.

The specific question you have here, was considered and decided by the Supreme Court of Missouri in the case of Fitterer vs. Crawford, 157 Mo. 51. The case involved a Masonic lodge similar to the one here. This lodge also owned a three story building, the first floor of which was rented to a store, the second was also rented and the third was used as a lodge room. The rents were used solely for the purposes of the lodge.

The court at page 63 states:

"But in order that the property in question shall be exempt from taxation, it must under the statute have been used exclusively for purposes purely charitable. The building erected upon the ground is three stories high, the first story is rented and used for a store room. The second story is also rented. The third story is used and occupied by the members of said lodge as a lodge room and ante-rooms in connection therewith. The rents received from the building are used in the liquidation of a debt incurred by the lodge in constructing the building and for no other purpose. It is upon the condition that the property is used

exclusively for purely charitable purposes,' that it is exempted from taxation. It must be remembered that it is not exempted from taxation simply because it belongs to the Masonic Lodge, but because of its exclusive use by the lodge for charitable purposes. Now as to the third story there can be no question as to its use for such purposes, but as to the other stories and the ground they are not so used, and being parts of the same building and belonging to the same party, it could not be parceled out, and thus assessed and taxed so as to bring that part of it 'used exclusively for charitable purposes' within that provision of the statute which exempts such property from taxation. Nor do we think that merely applying the rents received from the first and second stories to the extinguishment of the debt incurred in the construction of the Masonic Lodge building is 'using the building exclusively for purely charitable purposes' within the meaning of the statute. 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 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."

This case is exactly in point and is decisive of the question here.

CONCLUSION.

It is therefore, the opinion of this office that

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where a three story Masonic Lodge building has two stories which are rented out to businesses, it is not being used exclusively for charitable purposes and hence is not exempt from taxation.

Respectfully submitted

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APPROVED:

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