

TAXATION AND REVENUE: Real property held by Trustees of Jacob L. Babler Trust for income producing purposes is not exempt from taxation.

January 31, 1947



Honorable Phil M. Donnelly
Governor of Missouri
Jefferson City, Missouri

Dear Sir:

Reference is made to your inquiry of recent date, requesting an official opinion of this office, and reading as follows:

"I am enclosing a letter from Joseph W. White, Vice President, Mercantile-Commerce Bank and Trust Company, St. Louis, in regard to the Babler State Park, which is self-explanatory. I believe it would be advisable to have an opinion from your department in regard to the question of taxes referred to in this letter."

The letter referred to by you reads as follows:

"As you know, Henry Babler and this Company are Trustees under the will of Jacob L. Babler, Deceased. By his will, he left his entire residuary estate in trust for a period of twenty years with the income and principal devoted to the maintenance, upkeep and improvement of Babler State Park, situated in St. Louis County, Missouri.

"Included in the assets of the estate are various parcels of real estate in the City of St. Louis and the Counties of St. Louis, Pulaski, St. Charles and Sullivan. The question arises as to whether or not these properties are subject to taxation by the state and the political subdivisions thereof.

"I refer you to Article X of the New Constitution, Sections 6 and 10. It would seem to me

that if we continue to pay general taxes on this real estate we will not be fulfilling the terms of the will of Jacob L. Babler because the money so used to pay these taxes will not be devoted to the purposes set forth in the will; namely, for the maintenance of Babler Park.

"In view of the interest that the State of Missouri has in Babler Park it would seem to me that this is a matter on which the Attorney General should render an opinion."

Section 6 of Article X of the Constitution of 1945, referred to in the letter, reads as follows:

"All property, real and personal, of the state, counties and other political subdivisions, and non-profit 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."

Section 10 of Article X of the Constitution of 1945, also referred to in the letter, reads as follows:

"(a) Except as provided in this Constitution, the general assembly shall not impose taxes upon counties or other political subdivisions or upon the inhabitants or property thereof for municipal, county or other corporate purposes.

"(b) Nothing in this Constitution shall prevent the enactment of general laws directing the payment of funds collected for state purposes to counties or other political subdivisions as state aid for local purposes."

We are unable to discover any relationship between Section 10 of Article X of the Constitution and the question presented.

Acting under the permissive authority granted by Section 6 of Article X of the Constitution of 1945, the 63rd General Assembly enacted House Committee Substitute for House Bill No. 471. Included therein is Section 5, relating to exemptions from taxation for state, county or local purposes. This section reads as follows:

"The following subjects shall be exempt from taxation for state, county or local purposes: First, lands and other property belonging to this state; Second, lands and other property belonging to any city, county or other political subdivision in this state, including market houses, town halls and other public structures, with their furniture and equipments and on public squares and lots kept open for health, use or ornament; Third, lands or lots of ground granted by the United States or this state to any county, city or town, village or township, for the purpose of education, until disposed of to individuals by sale or lease; Fourth, non-profit cemeteries; Fifth, the real estate and tangible personal property which is used exclusively for agricultural or horticultural societies heretofore organized, or which may be hereafter organized in this state; Sixth, 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 shall be exempted from taxation for state, city, county, school, and local purposes; provided, however, that the exemption herein granted shall 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 be used wholly for religious, educational, or charitable purposes." (Emphasis ours.)

You will note that the exemption granted to real property owned by religious, educational or charitable institutions extends only to that which is "actually and regularly used exclusively" for the purposes of the institutions. It is our understanding from the statements contained in the letter received by you from Mr. White, that the various properties re-

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ferred to therein are not actually and regularly used exclusively for the Babler State Park, but rather that only the income derived therefrom is devoted to that purpose.

In the premises, the properties fall squarely within the proviso contained in the Sixth subdivision of Section 5 of H.C.S.H.B. No. 471, quoted supra. The proviso specifically withdraws such properties from the exemption even though the entire income arising from the ownership thereof is devoted exclusively to the purposes of the trust, for the maintenance, upkeep and improvement of the Babler State Park.

CONCLUSION

In the premises, we are of the opinion that the properties held by the Trustees under the will of Jacob L. Babler, Deceased, which are not actually and regularly used exclusively for the Babler State Park, are not exempt from taxation for state, county and local purposes, even though the income derived therefrom is used wholly for the purposes of the trust.

Respectfully submitted,

WILL F. BERRY, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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