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Honorable Robert P. C. Wilson III
Prosecuting Attorney
Platte County
Platte City, Missouri.

Dear Mr. Wilson:

We have yours of recent date in which you request an opinion of this department on the question of whether or not real estate owned in Platte county by the City of Kansas City, Missouri is subject to taxation.

In your letter you state that this real estate is not used for city purposes, that it adjoins real estate on which the city waterworks are located and is rented and used solely as a farm.

Section 6, of Article 10 of the Constitution of Missouri, 1945, which relates to the subject of exemption from taxation property reads, in part, as follows:

"All property, real and personal, of the state, counties and other political subdivisions, and non-profit cemeteries, shall be exempt from taxation; * * *"

The 63rd General Assembly passed an enabling act to this section which will be found in Laws Missouri, 1945, at page 1800. The Act insofar as it applies to your question, reads, in part, 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; * * *".

From the way you have stated your question, you seem to take the position that even though the land is owned by the city, yet, since it is not used for city purposes it should not receive the benefits of the exemption sections. We do not think that the Missouri courts have given these exemption sections of the Constitution and statutes that construction. In other words, we think that "ownership" determines whether or not property owned by municipalities is exempt from taxation.

In 129 A.L.R. at page 481, Subhead II, cases are annotated under the heading of unqualified exemption of publicly owned property, and the following principle is stated over which those cases are cited,

"The rule stated in the earlier annotations, that where the exemption of property owned by the state or subordinate municipal bodies is express and unqualified, such property cannot be taxed, irrespective of the use to which it is put, was applied in Anderson-Cottonwood Irrig Dist. V. Klukert(1939) 13 Cal(2d) 191, * * * *"

The case of Grand River Drainage District vs. Reid, 341 Mo. 1246, 111 S.W. (2d) 151, is cited as one following the above rule. The Grand River Drainage District acquired land at tax sales and the taxing authorities attempted to impose and collect ad valorem taxes on this land because it was not used for drainage district purposes. The court in that case went into the question of the reason for acquiring land and the use to which it was put and held that it was not subject to taxation citing the constitutional provision hereinbefore set out.

In the case of State ex rel. John Mills, Collector of the City of Aurora vs. Fleming et al., 275 Mo. 509, the principle was applied that where a flat exemption is made on account of ownership of property that the exemption does not depend on what use such property may be put.

We think the principle as stated in Am. Jur. Vol. 51, page 559, Section 570, is applied in Missouri. This reads as follows:

"Property owned by the state or subordinate

municipal bodies is expressly exempted from taxation by constitutional provision or statutory enactment in many jurisdictions. In such instances, although there is authority otherwise, the prevailing rule is that where the exemption is express and unqualified, no tax can be levied against it, regardless of the use to which it is put. According to this doctrine, where a tax exemption is directed solely to the 'ownership' of public property, the use to which such property is put is immaterial. Under a constitutional exemption of such property 'as may belong to' the state, a mortgage to the regents of the state university was held exempt. A building owned by a municipality and operated as a dispensary of municipally owned liquors has been held public property which could not be taxed under a statute exempting 'all public property,' even though it was used for the purpose of producing income."

CONCLUSION

Under these authorities the lands which the City of Kansas City owns and which are located in Platte County are not subject to taxation even though such lands are used for farming purposes.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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