

TAXATION:

Any property owned by a city is exempt from taxation under the authority of the Constitution and under Section 10.942.4 Mo. R.S.A.

January 7, 1949

Mr. R. M. Gifford
Prosecuting Attorney
Milan, Missouri



Dear Sir:

This will acknowledge receipt of your letter of December, 1948, in which you request an opinion of this department. Said letter, omitting caption and signature, is as follows:

"The City of Greene City, Sullivan County, Missouri, a city of the fourth class, has title to a business building in that city on which they have executed a lease for a term of fifty years to the King-Walker-Custer Post No. 365 to be used as a meeting place for its members. This lease includes both stories of the building and recites a payment for rental of One Dollar per year.

Now the Legion has entered into an agreement whereby they have leased a part of the second floor to individuals for living purposes and office space in one instance. They, of course, are receiving compensation for this space but none of it, except the recited one dollar, goes to the use of the City.

The question arises whether under such agreement and arrangement such building can be assessed for tax purposes.

Your opinion will be appreciated."

From the facts stated above it appears that we have a situation where municipally owned property, which is not being used for municipal purposes, is leased to a patriotic but non-charitable organization.

All property owned by a city is, under Section 6 of Article 10 of the Constitution of Missouri, exempted from taxation. Said provision is as follows:

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"Section 6. 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."

It will be noted that "cities" or "municipal corporations" are not specifically named in the above constitutional provision; however, the courts have held that cities and municipal corporations are political subdivisions of the state, which are specifically mentioned in the aforesaid provision. In the case of *State ex rel Spencer vs Anderson*, 101 S.W. (2) 530, the St. Louis Court of Appeals made the following statement:

"A municipal corporation, on the other hand, is but a creature or political subdivision of the state, possessing only such powers as are conferred upon it by express or implied provisions of law, and with any reasonable doubt as to whether it has a given power resolved against it. *State ex rel City of Blue Springs vs McWilliams*, 335 Mo. 816, 74 S.W. (2) 363; *State ex rel City of Hannibal vs Smith*, 335 Mo. 825, 74 S.W. (2) 367; *Taylor vs Dimmitt*, 336 Mo. 330, 78 S.W. (2) 841, 98 A.L.R. 995."

Pursuant to the above authority, the Legislature, in 1945, passed a statute which is known as Section 10942.4 Mo. R.S.A. exempting city owned property from taxation, which statute provides 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 ornaments; Third, land 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

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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."

It will be noted that the constitutional provision set out supra authorized legislation exempting the property belonging to cities without any reservation as to the income derived therefrom, if any, or without any other consideration. The statute cites also exempted property owned by a city, the only proviso being, that in the case of an organization the property should be used for organization purposes and not for investment purposes. However, in the instant case, even if the proviso relative to investments referred to the cities, it certainly could not be said that if Green City was holding this property for investment purposes that it would lease the property for the sum of One Dollar for fifty years.

The courts of this state have held that exemptions from taxation must be strictly but reasonably construed. See *Missouri Goodwill Industries vs Gruner*, 210 S.W. (2) 38, (Mo. Sup).; *Salvation Army vs. Hoehn*, 188 S.W. (2) 826, 354 Mo. 107. However, this rule applies to the question of whether a particular organization is of a charitable nature. We are not asked to determine whether an organization is or is not of a charitable nature since the exemption to be considered in our case refers to city owned property and such property is specifically exempted by statute under the authority of the Constitution of Missouri. Under such circumstances, this department feels that a strict construction of the constitutional provision and statutes pertaining thereto will render this property non-taxable.

In view of the facts, either the city or the lessee may be taking advantage of the law but such fact can not alter it. Certainly, if the property was owned by the Legion and any part of it was rented and income derived therefrom, regardless of the organization's patriotic or charitable nature, such property would be taxable. See *Fitterer vs Crawford*, 57 S.W. 532, 157 Mo. 51. However the property in question is owned by a municipal corporation and is, as such, we feel, non taxable and remains so under all

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conditions. In the case of State ex rel Orr vs Buder, Assessor, et al, the Supreme Court stated as follows:

"Non-taxable property is non-taxable under all conditions."

It appears to this department that this is non-taxable property and will remain such in spite of the circumstances set out in your request.

CONCLUSION

Therefore, it is the opinion of this department that the municipally owned building, even though leased to a non-charitable, patriotic organization which is deriving income from the rent thereon, is non-taxable under the provisions of the Constitution of Missouri and the Statutes pertaining thereto.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney General

APPROVED:

J.E. TAYLOR
Attorney General