

January 11, 1972

OPINION LETTER NO. 39  
Answer by Letter - Klaffenbach

Honorable Robert S. Wiley  
Prosecuting Attorney  
Stone County  
Galena, Missouri 65656



Dear Mr. Wiley:

This letter is in response to your request for an opinion in which you ask the following question:

"[W]here the Gate of the Temple, a Masonic Association, a Corporation, owns real estate located in Stone County, Missouri, small tracts of which are used by the members of the Association, their families and guests, for recreational purposes, is the real property exempt from taxation for county purposes under R.S. Mo. 137.100?"

You further state that:

"On October 19, 1949, B. F. Rice conveyed to Gate of the Temple, a Masonic Association, a Corporation, the Southwest Quarter of the Northwest Quarter of Section 25, Township 22, Range 23, Stone County, Missouri. The abstractor's copy of the warranty deed is attached hereto. The conveyance was executed upon certain conditions, including the following: that the property 'be used solely by the grantee, its members, their families and guests. . . ."

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"The property is not used by the Association for worship or meeting purposes. Several cabins have been erected on the property, and the cabins are available to lodge members for recreational purposes. Each lodge member so using the real property 'donates' \$50.00 to the Association for the use thereof."

It is also our understanding that the Gate of the Temple, a Masonic Association, is a pro forma decree corporation incorporated by the order of the Circuit Court of Greene County. A copy of the decree is attached hereto.

First we note that the facts that you have furnished to us as noted above are rather meager and thus there is some difficulty in answering your question. Each tax exemption case is of course separate and distinct and must be decided upon its own particular facts. Paraclete Manor of Kansas City v. State Tax Commission, 447 S.W.2d 311 (Mo. 1969).

However the correct rules to be applied can be found in Fitterer v. Crawford, 57 S.W. 532 (Mo. 1900). In that case the Court noted that as a rule all property is liable to taxation and exemption is the exception, and it devolves upon the person claiming that any specific property is exempt to show it beyond a reasonable doubt. Id. 533. However the fact that the property in this case is used by only members and their guests does not necessarily make the use a non-charitable use. There is a material difference between what is denominated as a public charity and what is for purposes purely charitable. Id. 534-535. A too restrictive definition of charitable purposes should not be applied. YMCA v. Sestric, 242 S.W.2d 497, 503 (Mo. 1951).

Your question indicates that the so-called donation of \$50.00 for an undetermined period of use is in fact a rental. However it is our view that whether such payment is or is not a true donation does not in itself control in these circumstances since the primary question is whether, under Section 137.100, RSMo 1969, the use is charitable. In this respect your attention is called to the opinions of the Missouri Supreme Court relating to the use of land such as YMCA v. Sestric, *supra*; Midwest Bible & Missionary Institute v. Sestric, 260 S.W.2d 25 (Mo. 1953), and St. Louis Gospel Center v. Prose, 280 S.W.2d 827 (Mo. 1955). See also, In re Burroughs' Estate, 206 S.W.2d 340 (Mo. 1947) where the Court at l.c. 344 distinguished organizations having the primary purpose of social benefit to its members.

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In the premises we not able to say that the property is or is not actually and regularly used for purposes purely charitable or is or is not actually occupied for the purpose of the organization.

Very truly yours,

JOHN C. DANFORTH  
Attorney General

Enclosure