

TAXATION: COLLEGE
DORMITORIES EXEMPT
FROM: WHEN:

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A nonprofit educational corporation's dormitories and some other buildings used as housing facilities for its students and no space is rented to any others for residential or business purposes and transaction was not entered into by the college for investment purposes, then such buildings are used exclusively for educational purposes within meaning of Sub-section 6, Section 137.100 RSMo 1949, and buildings are exempt from taxation as long as they are thus used.

August 17, 1953

Honorable W. C. Frank
Prosecuting Attorney of
Adair County
Kirksville, Missouri

Dear Sir:

This is to acknowledge receipt of your recent request for a legal opinion of this department which reads as follows:

"The County Collector of Adair County has just informed me that the assessor assessed several buildings, owned by the Kirksville College of Osteopathy and Surgery, used as dormitories and housing facilities for students. The school is organized and incorporated as an educational institution for nonprofit as provided by Chapter 352-R.S. Mo., 1949, and they are taking the position that this property is not subject to taxation.

"It is my belief that the school's position is sound but the collector requests that I ask your opinion.

"If you already have an opinion on this subject please send me a copy of same and if not, I respectfully request your opinion regarding this school's liability for taxation of their real estate since they are an

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incorporated organization for non-profit under the provisions of Chapter 352-R.S. Mo., 1949."

Sub-section 6 of Section 137.100, RSMo 1949, provides that all real and personal property actually and regularly used exclusively for the purposes therein mentioned shall be exempt from taxation for city, county and school purposes. Said section reads as follows:

"(6) 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 exempt 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."

The opinion request states that the Kirksville College of Osteopathy and Surgery is an educational institution incorporated as a nonprofit institution under the provisions of Chapter 352, RSMo 1949.

The statement of facts of the opinion request is not in detail, consequently, for the purpose of discussion herein, it will be necessary to assume the existence of certain facts in connection with said request.

While it is not so stated in the last paragraph of your letter, we assume that the inquiry as to the liability or non-liability of the college for taxes on its real estate, has reference only to the dormitories and other buildings used as housing facilities for its students.

The opinion request does not indicate whether or not the buildings here in question have ever been, or are now being used

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wholly or partly for any other purpose than to provide dwelling places for those attending college. For example, if any or all of the space in said buildings has ever been used for a hotel operated by the college, or any other person, or whether any space has ever been rented out to the general public for commercial purposes and such activities have been entered into by the college for investment purposes, and apart from those purposes for which the institution was founded.

In the absence of any evidence to the contrary, it is assumed that the college buildings referred to above, have not been, and are not now being used for any other purposes than to provide dwelling places for students attending the college, and that such housing project was not entered into for investment purposes, but in connection with the educational program and activities of the college, and in furtherance of the purposes for which the institution was founded.

If the dormitories and other buildings of the college are exempt from taxation, it is by virtue of that portion of Section 137.100 quoted above, and not for the reason that the college was incorporated as a nonprofit corporation under the applicable provisions of Chapter 352, RSMo 1949. This principle was held to be the law in an opinion of this department rendered to the Honorable Roy A. Jones, Prosecuting Attorney of Johnson County, Missouri, on May 15, 1947. In that opinion it was held that the real estate and tangible personal property of a nonprofit corporation was not exempt from taxation merely because of the fact that the corporation was incorporated as a nonprofit organization. A copy of that opinion is enclosed for your consideration.

We wish to re-emphasize the statement that if the real and personal property of educational institutions are exempt from taxation under Section 137.100, supra, such property must be used exclusively for educational purposes, and to further the purposes for which such schools and colleges were founded, and not those for engaging in commercial activities and investment and which have no connection with the primary purposes for which said institutions were founded. This brings up the question as to what is meant by an exclusive use of property for educational purpose so that the school or college might be entitled to the tax exemption on that ground.

The phrase "exclusively used" was defined in the opinion of the case of State ex rel. Johnson 214 Mo. 656, and at l.c. 663 and 668 the court said:

"(b) The phrase 'exclusively used' has reference to the primary and

inherent use as over against a mere secondary and incidental use. (People ex rel. v. Lawler, 77 N.Y. Supp. l.c. 842, et seq.) If the incidental use (in this instance residing in the building) does not interrupt the exclusive occupation of the building for school purposes, but dovetails into or rounds out those purposes, then there could fairly be said to be left an exclusive use in the school on which the law lays hold (First Unitarian Society v. Hartford, 66 Conn. l.c. 375.)

* * * * *

"(d) In interpreting the phrase, 'used exclusively,' commonly found in constitutional and statutory tax-exempting provisions, it has uniformly been held that if certain parts of the school building be rented for stores or other income purposes, not merely incidental to the school itself, it destroys the exemption. * * *"

In the case from which the last above quoted excerpts were taken, it was held that the Kemper Military School, a private educational institution where the students, faculty members and their families were boarded, was exempt from taxes upon the school property. However, this case nor any others decided in Missouri, insofar as we are able to find, has ever passed upon the proposition referred to in the opinion request; namely, as to whether or not the dormitory buildings and other facilities for housing students, and owned and operated by a college are exempt from taxes under the Missouri statutes.

The general rule with reference to the taxation of dormitories of educational institutions has been stated in Section 781, Volume 2, Cooley on Taxation, and reads as follows:

"Dormitories for the use of students are generally held to be a part of exempt property of educational institutions. This is so although a certain sum is charged for the use of each of the apartments therein. But a building used partly as a dormitory and partly for commercial purposes is not exempt where

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the exemption is based on the use made of the property."

Again, the general rule on this subject has been stated more in detail in Section 622, Taxation, 51 Am. Jur., page 598, and reads as follows:

"The principle that the exemption of educational institutions extends only to property used for the purposes of the institution is frequently applied in the case of endowed universities, colleges, academies, etc. Dormitories and dining halls furnished by a college for the use of its students are clearly exempt. But a building used in part as a dormitory and dining hall will not be exempt if the part not required for such purposes is used as a hotel. As a general rule, residences for teachers erected upon or near the college grounds are held to be exempt, and similarly, the exemption of a school is not lost because the principal of the school and his family reside in the school building. In the final analysis, the exemption depends upon the particular statutory or constitutional provision involved and the facts and circumstances to which its application is invoked. Moreover, the occupancy of real property by an educational institution or its officers for the purposes for which it was established, in order to exempt the property from taxation must have, or be supposed to have, a direct connection with such purposes, and dwelling houses belonging to a college and rented by teachers for their own convenience and not for the benefit of the college are not exempt."

In the case of Yale University v. Town of New Haven, 42 A. 87, it was held that the dormitories occupied by students, buildings used as dining halls, and some other buildings used in connection with the college were exempt from taxes in the State of Connecticut, under the provisions of Section 3820 of the general statutes. In discussing the taxability of the college dormitories and other buildings of the college, the court said at l. c. 88, 91 and 94:

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"* * *If the buildings used by the college exclusively as dormitories and dining halls for its students are buildings exclusively occupied as a college, then the action complained of, in adding to the list dormitories and dining halls, was illegal; if such use is not a college occupation then said action was legal.

* * * * *

"The settled meaning of 'college' as a building or group of buildings in which scholars are housed, fed, instructed, and governed under college discipline, while qualifying for their university degree, whether the university includes a number of colleges or a single college, is now attacked. We have deemed it proper to trace this meaning with sufficient detail to demonstrate the utter unreason of the attack. This peculiar function of a college is inherent in the best conception of the university. This meaning has been attached to the English word for 800 years; it was the only meaning known at the time our first American colleges were founded; it was recognized and distinctly affirmed in the charter of Yale College; it has since been affirmed by repeated acts of legislation, and has received the sanction of constitutional confirmation. It was impossible for the legislature to express its meaning more clearly than in the language of section 3820, 'buildings occupied as colleges,' If it had, 'dormitories, dining halls, and other buildings occupied as colleges,' the meaning would have been the same, and the amplification would have added nothing to the precise certainty of the language used.

* * * * *

"For the reasons before given, we think that students' fees, whether apportioned to room rent or tuition, cannot be treated as income of real estate, and that land occupied and reasonably necessary for the

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plant of the college is not productive real estate, within the meaning of the proviso in the act of 1834. The vacant lots added by the assessors are exempt from taxation. The dwelling houses and factories added by the assessors are also exempt, unless some one or more of these must be added to the list returned by the plaintiff in order to reduce its net income from all its other real estate within the prescribed limit."

In the case of Troy Conference Academy etc. v. Town of Poultney, 66 A, 2, it was held that dormitories and dining halls furnished for use of their students are regarded as devoted to college purposes and the fact that certain sums are paid for the use of the rooms therein does not affect their exemption from taxes.

The court held that the residence halls or dormitories and facilities for furnishing young men and boys with food and lodging, particularly those of the low income groups was incidental to and a part of the purpose for which the Y.M.C.A. had been incorporated, and that buildings used for those purposes, and owned by the organization, were exempt from taxes, in the case of Young Men's Christian Association v. Sestric, 242 S. W. (2d) 497, at l.c. 506, the Supreme Court of Missouri said:

"The trial court found as a fact from the evidence in the record: 'That the purpose of the plaintiff in maintaining residence halls or dormitories in its three buildings on the properties hereinbefore described, together with the provision for service of meals, and for barber and laundry service and the sale of incidentals, including candy, periodicals, smoking and other supplies, and conveniences as shown by the evidence, is to provide for the welfare of young men and boys, especially and preferably those of lower earning capacity and income, by various desirable means, including particularly the maintenance of places and facilities of study, recreation and abode of a homelike and

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Christian character and with wholesome and decent environment and guidance designed to foster good citizenship and Christian ideals and character; that the provision of board and lodging in a protected and educational and religious environment for the purposes and under the circumstances shown by the evidence is in itself a charitable activity intimately related, incidental to and part of the charitable, educational, religious and eleemosynary activities of the plaintiff; that the provisions of said facilities is not for the purpose of making profit but is for the purpose of providing charity of a practical sort, and the provision and maintenance thereof dovetails into and rounds out the charitable purposes of plaintiff.' We rule that this finding is supported by the record and is correct."

In view of the above cited cases setting forth the general rule prevailing in most jurisdictions with reference to the non-taxability of dormitories operated by educational institutions for the benefit of their students, it is our thought that if the dormitories and other buildings of the Kirksville College of Osteopathy and Surgery, an educational nonprofit corporation, are used for the sole purpose of providing housing facilities for its students and such activity was not entered into for investment, or for commercial purposes, and no apartments in said buildings are ever rented to any persons for residential purposes except to its own students, nor any space therein is ever rented for business purposes, then such buildings are used exclusively for educational purposes within the meaning of Sub-section 6, Section 137.100, supra, and they are exempt from taxation.

CONCLUSION

It is therefore the opinion of this department that a college incorporated as a nonprofit educational institution whose dormitories and some other buildings are used as housing facilities for its students; no space in said buildings being rented to any other persons for residential or business purposes, and the transaction was not entered into by the college for investment purposes, then such activities are in furtherance of

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the purposes for which the institution was founded and such buildings are used exclusively for educational purposes within the meaning of Sub-section 6, Section 137.100, RSMo 1949, and they are exempt from taxation as long as they are thus used under the provisions of said section.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul N. Chitwood.

Very truly yours,

JOHN M. DALTON
Attorney General

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encl.