

TAXATION: Personal property used exclusively for charitable purposes not exempt from taxation.

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Honorable Lamkin James
Prosecuting Attorney
Saline County
Marshall, Missouri

Dear Mr. James:

This department has received your letter of April 22nd which reads, in part, as follows:

"The County Board of Equalization has requested me to ask your opinion as to the exemptions applicable to religious, educational and charitable organizations and institutions.

"The particular matter in controversy grows out of a charitable trust created by a will in about the year 1850, by the terms of which a sum of money was devised to certain trustees to be invested by said trustees for the purposes of educating poor and needy children. The corpus of this fund now consists of approximately \$80,000. in real estate notes, and is known as the Sappington School Fund. The income is distributed to worthy pupils throughout the county by persons designated by the Board of Trustees. These men, together with the trustees, receive no compensation for their services. In other words, the entire fund is used for worthy charitable and educational purposes. * * * * *

"I would very much appreciate your opinion as to the right of the State, County and City to tax the personal property belonging to above institutions."

It is well established that notes and deeds of trust and mortgages are personal property. As stated in 50 C. J. 760, personal property:

" * * * in its broad and general sense it includes everything which is the subject of ownership not coming under the denomination of real estate; and all subjects of property not of a freehold nature, nor descendible to the heir at law, are personal property. * * * The term has been held to include * * * notes, promissory notes, * * * a mortgage * * * ."

In 61 C. J. 197, we find the following statement:

"A debt secured by a mortgage is personal property subject to taxation, and is to be assessed and taxed to the owner at his domicile, * * * "

In the case of State ex rel. Dowell, County Collector vs. Renshaw, 66 S. W. 953, the Supreme Court of Missouri recognized that notes and deeds of trust are personal property. The court said:

"The evidence shows that the defendant carried the notes secured by said mortgages with him, wherever he went, and that when the interest or principal was to be paid he deposited or sent them for collection to the Mexico Savings Bank. This is sufficient to show that the personal property was physically in Mexico on June 1, 1895, and, as that was found to be the defendant's residence at that date, that established the situs of the property for the purpose of taxation."

Article 10, Section 6 of the Missouri Constitution exempts certain property from taxation. This Section reads as follows:

"The property, real and personal, of the State, counties and other municipal corporations, and cemeteries, shall be exempt from taxation. Lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, may be exempted from taxation, when the same are used exclusively for religious worship, for schools, or for purposes purely charitable; also, such property, real or personal, as may be used exclusively for agricultural or horticultural societies: Provided, That such exemptions shall be only by general law."

It is to be noted that property, both real and personal of the State, counties and other municipal corporations are exempt; cemeteries are exempt; lots to the extent of one acre in an incorporated city or town or within one mile thereof, and lots to the extent of five acres with the buildings thereon may be exempt from taxation when the same are used exclusively for religious worship, for schools, or for purposes purely charitable. Also such property, real and personal used exclusively for agricultural or horticultural societies are exempt, if such exemptions are so provided by statutory law. The statutory law, Section 9743 R. S. Mo. 1929, does so provide, in practically the same wording as the constitutional provision. Part six of said statute, reads as follows:

" * * * sixth, lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, when the same are used exclusively for religious worship, for schools or for purposes purely charitable, shall be exempted from taxation for state, county or local purposes."

Attention should also be called to Section 7, Article 10 of the Constitution, which provides as follows:

"All laws exempting property from taxation other than the property above enumerated, shall be void."

Nowhere in either the Constitution or Statutes can any exemptions be found in this connection as to personal property, even though such property is used exclusively for schools or for purposes charitable. Both the Constitution and Statutes refer to "lots" and "one acre" and "five acres" and presumably such terms refer to real property and not to personal property. This is particularly true in light of the well established principle of law that constitutional provisions or statutes, exempting property from taxation, must be strictly construed against those claiming exemptions. This rule has been announced often by the courts of this state and it is well expressed in the case of St. Louis Young Men's Christian Association vs. Gehner, 47 S. W. (2nd) 776. In this case, the court said:

"In this connection it may be stated that we are committed to a strict construction of statutes exempting property from taxation. State ex rel. v. Gehner, supra, The rule is stated by a standard text as follows: 'An intention on the part of the legislature to grant an exemption from the taxing power of the state will never be implied from language which will admit of any other reasonable construction. Such an intation must be expressed in clear and unmistakable terms or must appear by necessary implication from the language used, for it is a well settled principle that, when a special privilege or exemption is claimed under a statute, charter or act of incorporation, it is to be construed strictly against the property owner and in favor of the public. This principle applies with peculiar force to a claim of

exemption from taxation. Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and an alleged grant of exemption will be strictly construed and cannot be made out by inference or implication but must be beyond reasonable doubt. In other words, since taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it. Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the state has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favor would be intended beyond what was meant.' Cooley Taxation, vol. 2 (4th Ed.) pp. 1403-1408."

The case of the City of Kansas vs. The Kansas City Medical College, 111 Mo. 141, 20 S. W. 35, however is directly in point and decisive in the matter. The court conceded in this case, that the real property of the defendant, Medical School, was exempt, under Section 6 Article 10 of the Constitution, but refused to exempt the furniture and fixtures used by the school, because the same were personal rather than real property. The court said:

"As will be readily seen, the only question arising upon this record is whether the furniture and appliances used by the defendant in its medical college are subject to taxation. The question is restricted to the personal property of the defendant so used.

"It is conceded that the lot and buildings used for the college are exempt

by the general law of the state, but the contention of the city is that the constitution and statute alike limit the exemption to 'the lot with the buildings thereon,' and does not extend to the personal property. Whereas, the defendant claims that the exemption extends to, and was intended to extend to, 'whatever property is proper and necessary for said school and to the enjoyment and management of said college.'

"By section 6 of article 10 of the constitution, the legislature is authorized to pass a general law exempting from taxation 'lots in incorporated cities or towns * * * to the extent of one acre, and lots one mile or more distant from such cities or towns to the extent of five acres, with the buildings thereon * * * when the same are used * * * for schools.' The legislature, in pursuance of this grant, by section 7504, Revised Statutes, 1889, has made the exemption just as broad as the constitution has empowered it to do.

"Section 7 of article 10 of the constitution provides that 'all laws exempting property from taxation other than the property enumerated in section 6 of the same article shall be void.' So that it only remains for us to determine whether the words, 'the lot with the buildings thereon,' can be construed to include the personal property used in the building and not a part of the realty in law. We are very clear that they do not.

"The evident purpose was to exempt a certain amount of real estate. This is obvious from the immediate context. In the next succeeding

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clause the exemption of agricultural and horticultural property is extended to both real and personal property. Neither the language of the exemption, nor the provisions in pari materia will, in our opinion, admit of any other construction than that we have given it. The purpose is clear to limit the exemption to real estate and to a definite amount.

"The language of the constitution and the statute excludes any other conclusion. Omaha Medical College v. Rush, 22 Neb. 449, does not conflict with this view. There the exemption was of the property used for school. The word property there was broad enough to include real and personal, or either. It was not limited as ours is. It is not our province to add to these constitutional exemptions, however deserving they may be, or however loth we may be to reach this conclusion. Under the agreed statement of facts, the plaintiff was entitled to recover."

CONCLUSION

We conclude, therefore, that since the corpus of the fund you have described is invested in real estate notes, which is personal property, that the same is not exempt from taxation even though it is used exclusively for charitable or scholastic purposes.

Respectfully submitted,

APPROVED:

HARRY H. KAY
Assistant Attorney General

J. E. TAYLOR
(Acting) Attorney General

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