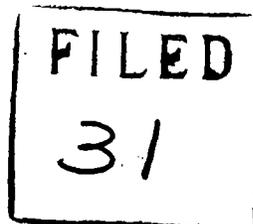


TAXATION AND REVENUE:
AGRICULTURAL AND MECHANICAL SOCIETIES:

Real property owned by agricultural and mechanical societies not exempt from taxation when not used exclusively for purposes set out in Section 14170, R. S. Mo. 1939.

January 10, 1947



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

Dear Sir:

Reference is made to your letter of recent date, requesting an official opinion of this office, and reading as follows:

"The Adair County Agricultural and Mechanical Society of Kirksville, Missouri, was duly incorporated in accordance with the provisions of Article 10, Chapter 102, Revised Statutes of Missouri, 1939. The Society have purchased 100 acres of land in Adair County to be used by the Society principally as a place on which to conduct an annual county fair. There are improvements on said property which are currently being rented as a dwelling house and the barn as a community sale barn which bring in a rental of \$125.00 per month. I am informed that the Society contemplate also occasionally renting the bar to various cattle breeding organizations such as the Aberdeen Angus Breeders Society and the Adair County Hereford Association for use as a sale barn. Such sales are a part of the purposes for which the society was incorporated, in that they promote the breeding of fine cattle.

"As Prosecuting Attorney of Adair County, Missouri, I request an official opinion as to whether or not the said premises is subject to

Honorable W. C. Frank

taxation or whether said property is exempt from taxation as being the property of a fraternal non-profit society. If such property is subject to taxation, is all of it subject to such taxation, or only that part which is devoted to income producing activities which are separate and apart from the express purposes stated in the incorporation of the Society."

Section 6 of Article X of the Constitution of 1945, provides as follows:

"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." (Emphasis ours.)

The language: "and all property, real and personal, not held for private or corporate profit" is a further restriction added to the provisions for exemption from taxation in the Constitution of 1945 that was not presented in Section 6, Article X of the Constitution of 1875. It being the constitutional authority that empowered the Legislature to enact Section 10942.4, Mo. Revised Statutes Annotated, Laws 1945, p. _____, H.C.S.H.B. No. 471, Sec. 5, now in effect, and providing as follows:

"The following subjects shall be exempt from taxation for state, county or local purposes:
* * * Fifth, the real estate and tangible personal property which is used exclusively for agricultural or horticultural societies heretofore organized, or which may be hereafter organized in this state; * * *" (Emphasis ours.)

Section 14170, R. S. Mo. 1939, restricts the purposes for which land and other property may be held by any society organized under the provisions of Article X, Chapter 102, R. S. Mo. 1939, and provides as follows:

Honorable W. C. Frank

"The land and other property which may be held by any society under the provisions of this article shall be held by the society for the sole purpose, and none other whatsoever, of erecting enclosures, buildings, and other improvements calculated and designed for meetings of the society, and for exhibitions of various breeds of horses, cattle, mules and other stock, and of agricultural, mechanical and domestic manufactures and productions, and for the purchase and importation, breeding and the keeping thereof of such foreign breeds of stock as the board of directors may deem advantageous to the interest of the county, and for the breeding, raising, purchasing and selling of all classes of pure breed stock."

The question, then, is whether or not the rental of the dwelling house and the barn has the effect of destroying the exclusive use for which such property may be held under Section 14170, supra. Keeping in view that the State has made special provisions for the organization of these societies, and has authorized the county courts to vote public moneys in aid thereof, and that a prominent chapter in our general laws is devoted to such societies, it can well be understood why they have been a proper subject for exemption from taxation. From the beginning, they have been treated as entirely distinct from private corporations organized solely for private gain. The language of the exemption, in view of these various statutes, is significant. They are denominated "societies," not "corporations." While, for certain purposes, they are given corporate powers, they are never classed with other corporations. We are forced to the conclusion that the exemption of agricultural and horticultural societies have reference to societies owning property and devoted exclusively to the uses set out in Section 14170, supra, and the rental of property does not appear in that section. If rental of property owned by the agricultural societies had been one of the lawful purposes of the agricultural societies it necessarily would have been included in the act.

We believe that the opinion in State ex rel. Koeln v. Y.M.C.A., 259 Mo. 233, is decisive of the instant matter. The St. Louis Y.M.C.A. was a religious and educational association. In such capacity it owned certain real property located in the City of St. Louis, of which some fifteen percent of the total area had been converted to income producing rental property. The contention was made by the religious and educational organization that, in view of the fact that such income as was produced under the rental agreement was used exclusively for the purposes of the organization,

Honorable W. C. Frank

its real property had not lost its exemption from taxation. A decree of the circuit court had upheld the right of the state and city to levy and collect general real estate taxes upon the real property in the circumstances outlined, and the Y.M.C.A. had appealed.

In affirming the decree of the circuit court and holding that the property was subject to taxation the court said, l. c. 237:

"Two of the cases cited by respondent (Taylor v. Labeaume, 17 Mo. 338; and Fitterer v. Crawford, 157 Mo. 51) furnish very strong support for the decree of the circuit court. The ruling in the Fitterer case (157 Mo. 51) is a construction of our present Constitution and statute, and holds that a building owned by a Masonic lodge, on account of the charitable designs and practices of such lodge, is exempt from taxation, so long as it is used exclusively for such lodge purposes, but when two of the floors of such building are rented for commercial purposes then the entire building becomes subject to taxation. In deciding that case it was said: 'There is a very material difference between the "use of a building exclusively for purely charitable purposes," and renting it out, and then applying the proceeds arising therefrom to such purposes. To rent out a building is not to use it within the meaning of the statute, but in order to use it, it must be occupied or made use of. Moreover, by leasing the property the lodge becomes the competitor of all persons having property to rent for similar purposes, and the plain and obvious meaning of the statute is that such property shall not be exempt from taxation.'"

While there are no other Missouri cases which we have been able to find which have decided the precise point with respect to the real property of agricultural or horticultural societies, which has been converted to income producing rental property, yet there are a great many construing similar exemption provisions relative to educational and charitable organizations. In this regard, your attention is directed to Y.M.C.A. v. Baumann, 130 S.W. (2d) 499, and cases cited therein. In each of these cases a similar conclusion was reached to that arrived at in the Y.M.C.A. case from which the excerpt is cited supra.

Honorable W. C. Frank

The last expression of the Supreme Court of Missouri is found in *Evangelical Lutheran Synod, etc., v. Hoehn*, 196 S.W. (2d) 134 (not yet reported in State Reports), 1. c. 143:

"The prerequisites to tax exemption were:
(1) the use of the land itself, not merely its usufruct, for those exclusive purposes;
(2) the owner must be dedicated to those purposes. To that extent the ownership characterized the use. If the first were not true, a proper religious or charitable institution could have claimed tax exemption if, for instances, its real estate was merely rented out and the rentals devoted to its objectives--which is not the law.
* * * * (Emphasis ours.)

In addition to the authorities cited hereinabove, since Section 14170, supra, specifically sets out for what lawful purposes the agricultural societies may hold land and other property, and the fact the power to rent property is not provided for therein, the rental of their property by the societies would be ultra vires, and, in excess of the statutory grant of power to own the land, in addition to the destruction of the exemption from taxation contained in the constitutional and statutory provisions.

CONCLUSION

Therefore, it is the opinion of this Department that (1) real property, owned by an agricultural society, which is converted to income producing rental property, is no longer used exclusively for the purposes permitted under Section 14170, R. S. Mo. 1939, and loses its exemption from taxation, even though the income derived therefrom is devoted to the purposes of the agricultural society; (2) the rental of part of the property exempt from taxation destroys the exemption from taxation of the entire property.

Respectfully submitted,

ARVID OWSLEY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General