

TAXATION

) Property of Christian College is not rendered liable to
) taxation by reason of the ownership and maintenance of
) dormitories and cafeterias for students. Such property
) should not be assessed by assessor, but if assessed,
) county court may correct assessment and remit taxes
) levied against property.

December 28, 1949



Honorable Carl F. Sapp
Prosecuting Attorney
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Columbia, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"I have been asked, by the County Court, to determine what right the County has to remit taxes once they are assessed.

"Christian College, of this City, is an educational institution, and as far as I know, does not have any property used for investment purposes incidental to the running of the school. However, they maintain dormitories which are used for the housing of the girls attending the school; and they maintain dining rooms for the purpose of feeding the students. I believe that these dormitories and cafeterias are run on a non-profit basis.

"For many years the assessor of Boone County has been assessing Christian College property and setting a tax thereon. However, the County Court has made it a practice to remit the taxes before they are collected. Section 5 of the 1945 Session Laws, page 1799 provides; 'The following subject shall be exempt from taxation for state, county or local purposes:

* * * *

"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

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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 seems to me that under the above section, the assessor should not even assess the Christian College property unless the dormitories be considered investment property.

"I can find no authority for the assessment of the Christian College property; and I can find no authority for the county to remit the taxes if the property is assessed. At no place in the statutes pertaining to powers of the County Court do I find this power remittance set out.

"Will you please give me an opinion as to whether or not the Boone County Assessor may lawfully assess the property belonging to an educational institution where the school maintains dormitories and cafeterias operating on a non-profit basis, and on the power or authority of a county to remit taxes once they have been assessed."

1. Exemption of Property from Taxation.

The statutory provision quoted in your request was enacted pursuant to the provisions of section 6 of article 10, Constitution of 1945, which section reads in part as follows: " * * * all property, real and personal, not held for private or corporate profit and used exclusively for * * * schools and colleges * * * may be exempted from taxation by general law." (In your letter you do not expressly state that Christian College is not operated for private or corporate profit. Presumably it is a non-profit corporation.)

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We find no cases in which the exact question presented by you has been passed upon by the courts of this state. In the case of State ex rel. Spiller v. Johnston, 214 Mo. 656, 113 S.W. 1083, the court held that a building used as a private military boarding school was not deprived of its exemption from taxation as a building used exclusively for school purposes by reason of the fact that the proprietor and his family resided in the building. In the case of Y.W.C.A. v. Baumann, 344 Mo. 898, 130 S.W. (2d) 499, the operation of a cafeteria by the Y.W.C.A. was held not to cause the property in question to be deprived of its exemption because not used exclusively for charitable purposes.

Cases in other jurisdictions have considered directly the question of liability for taxation of college and university dormitories and dining halls under constitutional and statutory provisions similar to those found in this state. In the case of Yale University v. Town of New Haven, 71 Conn. 314, 42 A. 87, such property was held exempt. The statute there involved exempted "buildings or portions of buildings exclusively occupied as colleges, academies, churches or public school houses, or infirmaries." The court in its opinion stated (42 A. 1. c. 91) that the settled meaning of the term "college" is "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."

The court in the opinion further stated:

"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 said '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. * * *"

"The fact that certain sums are paid for use of the rooms occupied does not alter the character of the occupation. * * * And a college is none the less a college because its beneficiaries share the cost of maintenance; and it is immaterial whether such contribution is lumped in one sum, or apportioned to sources of expense, as tuition, room rent, lecture fee, dining hall, etc."

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A similar result was reached in the cases of Harvard College v. Cambridge Assessors, 175 Mass. 145, 55 N.E. 844; City of Chicago v. University of Chicago, 228 Ill. 605, 81 N.E. 1138; People v. University of Illinois Foundation, 388 Ill. 363, 58 N.E. (2d) 33.

In view of the foregoing authorities, we feel that the use of the property for dormitories and dining halls for students does not cause the property to be used other than exclusively for college purposes, and therefore such property is exempt from taxation.

2. Duty of Assessor.

The duties of the county assessor are set out in an act found in Laws of Missouri, 1945, p. 1782 (Sec. 11000.1 et seq., Mo. R.S.A.). Section 4 of the act requires the assessor to take an oath that he will "assess all of the real and tangible personal property in the county in which he assesses." However, other sections indicate, and such would certainly seem to be the proper procedure, that the assessor is obliged to assess only the taxable property located in his county.

Section 10 provides in part as follows: "He (the assessor) shall * * * require such persons to make a correct statement of all taxable real and tangible personal property * * * ." Section 14 requires the assessor to make a list of taxable property, when no list is returned to him. The affidavit required of the owner by section 17 refers to property "made taxable by the laws of the State of Missouri."

Thus, where property is clearly exempt from taxation, the assessor is not required to assess such property. Such action is clearly superfluous.

3. Authority of County Court.

"It has been held uniformly that county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. They have only such authority as is expressly granted them by statute." King v. Maries County, 297 Mo. 488, 249 S.W. 418, 1. c. 420.

Section 24 of Laws of Missouri, 1945, p. 1782, provides in part as follows:

"The county court of each county may hear and determine allegations of erroneous assessment,

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or mistakes or defects in description of lands, at any term of said court before the taxes shall be paid, on application of any person or persons who shall, by affidavit, show good cause for not having attended the county board of equalization or court of appeals for the purpose of correcting such errors or defects or mistakes. * * *

Section 24 of said act provides:

"The clerk of the county court shall immediately correct the tax book, and the copy thereof furnished for the use of the collector, under any order which may be made by said court in pursuance of the foregoing section; and if, by such correction, any alteration is made in the value of the property or the amount of taxes, he shall certify the same to the state auditor, who shall, on the settlement, allow the collector credit for any sum or sums to which such corrections may entitle him."

Assessment of exempt property would appear to be an "erroneous assessment" within the meaning of the above sections. Section 24 clearly contemplates remittance of tax liability in some instances.

Further authority of the county court to remit taxes on exempt property may be found in section 11114, R. S. Mo. 1939, re-enacted, Laws of Mo., 1945, p. 1910. That section requires the county court to examine delinquent tax lists certified to it, and provides that "if any of said lands, or town lots are not subject to taxation, * * * the said court shall correct such error by the best means in their power * * *."

CONCLUSION

Therefore, this department is of the opinion that property owned by Christian College is not deprived of its tax exempt status by reason of the ownership and operation by the college of dormitories and dining halls for students at said college; that the property of said college should not be assessed by the Boone County Assessor; and that should such property be assessed, the county court, upon proper application, may remit any taxes, levied and unpaid, upon

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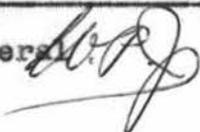
such property.

Respectfully submitted,

APPROVED:

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