

TAXATION: ✓

CONSTITUTION: ✓

Section 13870 violates Sections 6 and 7 of Article X of the Constitution of Missouri and is void.

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July 7, 1933

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Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Mr. Smith:

This Department acknowledges receipt of your letter dated June 29, 1933, as follows:

"Section 13870 R.S.Mo. 1929, provides that buildings leased by the state for military purposes shall be exempt from taxation for all purposes during the period of such ownership.

Please advise me the constitutionality of this section, as there are a number of buildings over the state where one room is leased for military purposes and they are attempting to escape taxation on the entire building under this section".

Section 6 of Article X of the Constitution of the State of Missouri provides:

"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".

Section 7 of Article X of the Constitution further provides:

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

Section 13870 Revised Statutes Missouri 1929, is as follows:

"All armories owned by this state or by any organization of the national guard and all buildings leased by the state for military purposes shall be exempt from taxation for all purposes during the period of such ownership".

It is clear of course that buildings leased to the state for military purposes are not included within the exemptions provided for in Section 6 of Article X of the Constitution of Missouri, and Section 7 of Article X of the Constitution unqualifiedly says that all laws exempting property from taxation, other than the property enumerated in Section 6 of Article X of the Constitution, shall be void.

Speaking of a prior constitution and of decisions of the court construing same in the case of Life Association of America v. Board of Assessors of St. Louis County, 49 Mo. 512, the court at page 519 of the opinion said:

"Since these decisions, however, that discretion has been withdrawn from the legislature, and they are now expressly forbidden to exempt any property from taxation".

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It is a significant fact that in State ex rel v. Fleming, 275 Mo. 509, involving a suit to collect taxes against certain lots in the City of Aurora, Missouri, where the building thereon had been leased to the state for military purposes and was used by the national guard of the State of Missouri, while the court upheld the tax yet it is mentioned that the constitutionality of the section was not raised, the unconstitutionality of Section 13870 doubtless occurring to and prompting the observation of the court.

Since buildings leased by the state for military purposes are not exempted from taxation by Section 6 of Article X of the Constitution, then the legislature was without power or authority to make the exemptions attempted to be made in Section 13870.

We are of the opinion that Section 13870 Revised Statutes Missouri 1929, violates Section 6 of Article X and Section 7 of Article X of the Constitution of the State of Missouri; that the same is void and of no effect and that taxes against buildings leased by the state for military purposes may be levied and collected as taxes against other like property, if otherwise taxable.

Very truly yours,

GILBERT LAMB
Assistant Attorney General,

APPROVED:

ROY MCKITTRICK
Attorney General.

GL:LC