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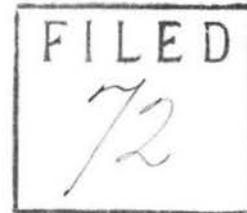
Property occupied by state militia or national Guard as armories not exempt from taxation.

CONSTITUTION:

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

6-20
June 15, 1933

Honorable Henry M. Phillips
Prosecuting Attorney
Bloomfield, Missouri



Dear Mr. Phillips:

This Department acknowledges receipt of your letter dated June 9, 1933, in which you state and inquire as follows:

"There are three buildings in our county occupied as armories by companies of the state militia. The owners of these buildings claim that these buildings are exempt from taxation because so occupied as provided in Section 13870 R.S.Mo. 1929. This would seem to be true if said Section 13870 is constitutional. However Art.X Sec. 6 of the State Constitution designates specifically what property may be exempted by law, and Section 7 of the same Article provides that no other property may be exempted by law.

I would like to have your opinion upon the question for the benefit of our township collectors."

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

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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".

Cited under the latter section is the case of State ex rel v. Fleming, 275 Mo. 509, which involved a suit to collect taxes against certain lots in the City of Aurora, Missouri, where the building thereon had been leased to the State of Missouri for military purposes and was used by the national guard of the State of Missouri. It is significantly mentioned in the opinion that the constitutionality of what is now Section 13870 was not in the case because not raised by the plaintiff, so the above case is not authority on your question.

Speaking of a prior constitution the opinion in Life Association of America v. Board of Assessors of St. Louis County, 49 Mo. 512, 519, which constitution it seems gave the legislature some discretion as to exempting property from taxation, mentioned that fact and further 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".

The case of State ex rel v. Macgurn, 187 Mo.238, was an action to collect taxes on certain real estate in the City of St. Louis. It appears that the property was leased and used exclusively for school purposes but that the lessor received a rental therefor. In the course of the opinion at page 243 the court said:

"But on the contrary, when the owner leases his land to the public for a public use, or to a quasi-public body for a charitable or religious use, and applies the rents derived from the land to his own personal advantage, he contributes nothing to the public or to charity, he loses nothing by the use, he is not a benefactor to any one, but he stands before the law in exactly the same light as any one else who leases his land for any other purposes, and uses the rents for his own advantage, and, therefore, he is not entitled to any special consideration at the hands of the law or the government, and his property is not exempt.

There would be just exactly as much, and no more or less reason, for holding that the property of one who sold provisions or supplies to a charitable institution which were used to support the lives of the inmates thereof, was exempt from taxation. In both cases he would get and appropriate to his own use the proceeds or products of his property, just the same as if it had been rented or sold to a private citizen or to a business concern, and in neither instance would the State or the charitable institution be benefited one jot or tittle by the transaction, for it would pay a full consideration for all it got".

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Assuming that the lessors mentioned in your letter received rental for the property occupied as state armories by the state militia, then the property would be taxable under the above holding because of course schools come within the exemptions of Section 6 of Article X of the Constitution, while property used as an armory by the state militia does not.

If and when the question is properly raised and saved we have no doubt the court will hold Section 13870 Revised Statutes 1929 to be violative of Sections 6 and 7 of Article X of the Constitution of the State of Missouri, because Section 13870 undertakes to do exactly what Section 7 of Article X of the Constitution says shall be void legislation, that is the legislature undertook to exempt property not exempted by Section 6 of Article X of the Constitution and Section 7 of Article X of the Constitution says when the legislature undertakes to do that the enactment will be void.

Assuming that the lessors of the property mentioned in your letter receive rent for the use of same as armories for the state militia, then taxes thereon would be collectible for that reason and we further are of the opinion that Section 13870 Revised Statutes Missouri 1929 is void and in violation of Sections 6 and 7 of Article X of the Constitution of the State of Missouri, and would be no defense to an action to collect taxes on the property mentioned in your letter.

Very truly yours,

GILBERT LAMB
Assistant Attorney General,

APPROVED:

ROY McKITTRICK
Attorney General.

GL:LC