

**TAXATION:**

Lands purchased by William Jewell College at foreclosure, for payment of endowment funds loaned by it on the lands as security, are exempt from taxation.

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11-20  
November 10, 1934

Honorable James S. Rooney  
Prosecuting Attorney  
Liberty  
Missouri



Dear Mr. Rooney:

Receipt of your letter dated October 11, 1934 is acknowledged. Your letter follows:

"The Trustees of William Jewell College, being the name of the corporation owning and operating William Jewell College at Liberty, Missouri, has for several years loaned a part of its endowment fund on real estate security and during the last four or five years has acquired by foreclosure a considerable amount of farm land in this as well as other counties in Missouri.

The Assessor and Collector of Revenue of this County takes the position that the College is liable for State and County taxes on its farm land owned and acquired as above stated. The land involved is, of course, not used directly in connection with the College, but it does constitute a part of the endowment fund of the College.

The question of the right to tax college property was before the Supreme Court and was considered in an opinion appearing at 224 Mo. 299.

That case specifically involved only personal property, but it would appear that the reasoning in the case would settle the above question adversely to the contention of the Assessor and Collector.

Will you please give us your opinion on the matter? "

In a consideration of the important problem presented by your inquiry, we are impressed with the statement made by Chief Justice of the United States Marshall, in the opinion in the case of the Trustees of Dartmouth College v. Woodward 4 Wheat. (U. S.) 519, 4 L. ed. 629, wherein at page 625 of the opinion, L. ed. 656, it was said:

"This court can be insensible neither to the magnitude nor delicacy of this question\* \* \* \* \* And, however irksome the task may be, this is a duty from which we dare not shrink. "

In reaching a conclusion on this matter we set out what we consider applicable portions of the Session Acts of Missouri, sections of the statute, sections of the constitution of the United States and of the State of Missouri.

1.

Certain persons as Trustees of William Jewell College were declared to be a body politic and corporate with perpetual succession, by an act of the Legislature of the State of Missouri found in the session acts of 1849 at pages 232, 233 and 234. Section 3 of the act provides:

"After the college shall have been located and named as provided in the second section, the persons named in the first section and their successors in office shall be known and styled by the name of the Trustees of the College thus named, and

shall have full power in their corporate capacity, to hold by gift, grant, devise, devise, or otherwise any lands tenements hereditaments, monies, rents, goods, or chattels of what kind soever the same may be, which is or may hereafter be given, granted, devised demised to or purchased by them for and to the use of the aforesaid college, and may sell and dispose of the same or any part thereof or lease, rent, or improve in such manner as they shall think most conducive to the interest and prosperity of said college."

Section 6 provides in part as follows:

"The treasurer shall take charge of the funds of the college which may be placed in his hands by order of the board, and shall pay out the same only upon orders of the board and shall perform such other services as may be prescribed by the board."

Section 13 of the act reads:

"That the property real and personal authorized to be held by said corporation by virtue of this act, shall be held and applied in good faith to the purposes of education according to the provisions of this act and for no other or different purpose. This act to be in force from its passage."

There is nothing in the foregoing act in reference to the exemption of any of the property that was owned or might be owned by the corporation, from taxation.

An act of the Legislature of the State of Missouri approved February 22, 1851, Laws of Missouri 1851, pages 64 and 65, exempting the then owned lands of the William Jewell

College, or lands that might thereafter be granted or devised to it, from taxation, was passed. The act in full is as follows:

"Sec.1. That all the land and improvements thereon now owned by the 'William Jewell College' in the counties of Clay, of Grundy, Mercer and Sullivan, and all the lands that may hereafter be granted or devised to said college, (or any other institution of learning in this state), for the benefit of education, be, and the same are hereby exempted from all taxes and assessments so long as said lands may be owned by said college.

Sec.2. That the lands belonging to said college in the counties of Mercer and Sullivan which have been returned delinquent for non payment of taxes, are hereby released from the same; and the Register of Lands is hereby authorized to grant an acquittance of the same to said college on payment of the office fees.

Sec.3. That any person or persons, who shall wilfully cut, injure, destroy or remove any timber or other materials, from, or on, any of the lands belonging to said college without the consent of the Board of Directors thereof, shall be guilty of a misdemeanor, and subject to be indicted and punished as in cases now provided for by law.

Sec.4. This act is hereby declared a public act, and shall be given in charge to the grand juries of the counties of Clay, Grundy, Mercer and Sullivan, at each term of the circuit court.

This act to take effect and be in force from and after its passage.

Approved February 22, 1851."

At this point we direct attention to the wording of the act, in that only lands thereafter granted or devised to the college were exempted from taxation.

At the time of the passage of each of the foregoing acts of the Legislature the constitution of 1820 was in force and effect in Missouri.

Section 16 of Article XI of the Constitution of Missouri adopted in 1865 read as follows:

"No property, real or personal, shall be exempt from taxation, except such as may be used exclusively for public schools, and such as may belong to the United States, to this state, to counties, or to municipal corporations within this state."

The Constitution of Missouri adopted in 1875 became operative on November 30, of the last named year. Section 1 of the schedule of that constitution reads as follows:

"The provisions of all laws which are inconsistent with this Constitution, shall cease upon its adoption, except that all laws which are inconsistent with such provisions of this Constitution as require legislation to enforce them shall remain in force until the first day of July, one thousand eight hundred and seventy seven, unless sooner amended or repealed by the General Assembly.

Section 3 of article 10, of above Constitution provides that:

Taxes may be levied and collected for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and all taxes shall be levied and collected by general laws.

Section 4 of article 10, supra, provides that:

All property subject to taxation shall be taxed in proportion to its value.

Sections six and seven of said article, are as follows:

Sec.6. 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.

Sec.7. All laws exempting property from taxation, other than the property above enumerated, shall be void. "

Conforming to Section 6 of Article X of the Constitution, the Legislature of Missouri enacted a law in reference to exemptions of property from taxation. The same being now found in Section 9743 Revised Statutes Missouri 1929, and reads as follows:

" The following subjects are exempt from taxation: First, all persons belonging to the army of the United States; second, lands and lots, public buildings and structures with their furniture and equipments, belonging to the United States; third, lands and other property belonging to this state; fourth, lands and other property belonging to any city, county or other municipal corporation in this state, including market houses, town halls and other public structures, with their furniture and equipments and all public squares and lots kept open for health, use or ornament; fifth, lands or lots of ground granted by the United States or this state to any county, city or town, village or township, for the purpose of education, until disposed of to individuals by sale or lease; 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."

The first paragraph of Section 10 of Article I of the Constitution of the United States reads as follows:

"No State shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything

but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility."

2.

The act of the Legislature, Laws 1849, page 232, constituted a grant of a charter by the State of Missouri to certain persons named in the act and to their successors, and prior to the Constitution of 1865 and under the Constitution of 1820, the Legislature of this state had authority to make such grant. In State ex rel. v. Trustees of William Jewell College 234 Mo. 299, 314, it is said:

"Prior to the Constitution of 1865 there was no restriction on the legislative power in the matter of granting exemptions from taxation."

A charter is defined in Bouvier's Law Dictionary, Volume 1, Third Revision, page 469, as:

"A grant made by the sovereign either to the whole people or to a portion of them, securing to them the enjoyment of certain rights. 1. Story, Const. Sec. 161; 1 Bla. Com. 108.

A charter differs from a constitution in this, that the former is granted by the sovereign, while the latter is established by the people themselves: both are the fundamental law of the land."

And further,

"The charter of a corporation consists of its articles of incorporation taken in connection with the

law under which it was organized;  
Chicago Open Board of Trade v.  
Bldg. Co. 136 Ill. App. 606.

The name is ordinarily applied to government grants of powers or privileges of a permanent or continuous nature, such as incorporation, territorial dominion or jurisdiction. Between private persons it is also loosely applied to deeds and instruments under seal for the conveyance of lands. Cent. Dict."

The rule of construction to be applied in this case is declared in State ex rel. Waller v. Trustees of William Jewell College 234 Mo. 299, 308, to be as follows:

"It is urged that exemption statutes are to be strictly construed. Generally speaking, such is the rule. But we take it from the cases that there has been a well recognized exception to the rule. Perhaps a better wording would be to say that the courts have never been over anxious to apply the rule so as to impose burdens upon religious, scientific, literary and educational institutions. Strict construction has largely been applied to corporations organized for profit and gain, not to corporations performing a public service. As tending to show the drift of the courts, some of the cases may not be amiss."

The rule just stated is in conflict with the rule of construction laid down by the Supreme Court of the United States in the Home of the Friendless v. Rouse 8 Wall. (U. S. ) 430, 19 L. ed. 495.

Northwestern University v. The people 99 U.S. 309, 25 L. ed. 387.  
Jefferson Branch Bank of the State of Ohio v. Skelley 66 U. S. 436, 17 L. ed. 173.

By section 3, Laws 1849, page 232, the corporate body there created is given full power to hold by gift, grant, demise, devise or otherwise, lands, monies, rents, goods or chattels of what kind soever the same may be, which may have been or may thereafter have been given, granted, devised, demised to or purchased by the corporate body, to the use of the college. There is no tax exemption in the grant of charter powers to the corporation but the tax exemption right is to be found in the Act of 1851, at page 64, wherein it was enacted that all the lands and improvements thereon now owned by the 'William Jewell College' in certain counties and all the lands that may hereafter be granted or devised to said college be, and the same are exempted from all taxes and assessments so long as said land may be owned by said college.

The word 'grant' is defined in Coates and Hopkins Realty Company v. Terminal Ry. Co., 328 Mo. 1118, 1132, in the following language:

" 'Grant' means give, bestow or confer, to transfer property by an instrument in writing."

In view of the fact that it was held in State ex rel. v. Trustees of William Jewell College, supra, that the word 'lands' as used in the Act of 1851 included personal property belonging to the college, and therefore exempt from taxation, and in view of the further fact that the exempt personal property of the corporation was loaned and land taken as security therefor and thereafter purchased by the corporation and title taken thereto as in satisfaction, in part at least, of the debt, and in view of the broad power given the corporation by the laws of 1849, at page 232 in reference to holding lands, we are of the opinion that lands purchased by the corporation under such circumstances, would be lands granted to it within the meaning of the tax exemption act of 1851.

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(a) The real problem presented by your question is whether or not the Act of 1851 was such a grant as constituted a contract between the corporation and the State of Missouri, and further, whether or not

such act was thereafter repealed by the adoption of the constitutions of 1865 or 1875, or either of them, or the passage of statutory enactments, and whether or not if constitutional provisions and statutory enactments were sufficient for that purpose if the same would violate section 10, of article I of the Constitution of the United States as being an impairment of the obligation of a contract.

(b) Perhaps the first historical discussion of whether or not a grant of power by the sovereign to the corporation constituted a contract between the sovereign and the corporation, was in relation to the French East India Company in 1789. While the matter did not reach the stage of litigation, it seemed to be conceded by the Bar of France that such was the result of a charter grant by the sovereign to a corporation. A discussion of the subject may be found in "Tracts on French East India Company, Paris 1788."

The pioneer and leading case in this country, of course, is the Trustees of Dartmouth College v. Woodward, supra. In that case a charter was granted the plaintiffs on the 15th day of December, 1869, incorporating twelve persons therein named, under the name of "The Trustees of Dartmouth College," granting to them, and their successors, the usual corporate privileges and powers in relation to establishing and governing a college in the State of New Hampshire. The charter was granted to the Trustees by the British Crown. The State of New Hampshire thereafter passed certain legislation changing the management and set-up of the corporation as outlined in its charter. The question in the case was as to the validity of the acts of the legislature of the State of New Hampshire, it being claimed that the legislation violated the federal constitution prohibiting the passage of a law by a state impairing the obligation of a contract. Referring to the charter, at page 643 of the opinion, L. ed. 661, the court said:

"This is plainly a contract to which the donors, the trustees, and the crown (to whose rights and obligations New Hampshire succeeds), were the original parties. It is a contract made on a valuable consideration. It

is a contract for the security and disposition of property. It is a contract, on the faith of which real and personal estate has been conveyed to the corporation. It is then a contract within the letter of the constitution, and within its spirit also, unless the fact that the property is invested by the donors in trustees for the promotion of religion and education, for the benefit of persons who are perpetually changing, though the objects remain the same, shall create a particular exception, taking this case out of the prohibition contained in the constitution."

And further, on page 650, L. ed. 662:

"The opinion of the court, after mature deliberation, is, that this is a contract, the obligation of which cannot be impaired without violating the constitution of the United States. This opinion appears to us to be equally supported by reason, and by the former decisions of this court."

In the case of *The Home of the Friendless v. Rouse 8 Wall. (U. S.) 430, 19 L. ed. 495*, a companion case to that of *the Washington University v. Rouse 8 Wall. (U.S.) 439, 19 L. ed. 498*, the Supreme Court of the United States had under consideration and for construction, a charter granted by the Legislature of the State of Missouri to the Home of the Friendless, as well as to Washington University. In that case the tax exemption was contained within the charter grant and not as in the case of *William Jewell College* by a separate and later enactment. The court at page 437 of the opinion, L. ed. 497, said:

"It is true that legislative contracts are to be construed most favorable to the State if on a fair consideration to be given the charter, any reasonable doubts arise as to their proper

interpretation; but, as every contract is to be construed to accomplish the intention of the parties to it, if there is no ambiguity about it, and this intention clearly appears on reading the instrument, it is as much the duty of the court to uphold and sustain it, as if it were a contract between private persons. Testing the contract in question by these rules, there does not seem to be any rational doubt about its true meaning. 'All property of said corporation shall be exempt from taxation,' are the words used in the Act of Incorporation, and there is no need of supplying any words to ascertain the legislative intention. To add the word 'forever' after the word 'taxation' could not make the meaning any clearer. It was, undoubtedly, the purpose of the Legislature to grant to the Corporation a valuable franchise, and it is easy to see that the franchise would be comparatively of little value if the Legislature, without taking direct action on the subject, could, at its will, resume the power of taxation. This view is fortified by the provisions of the general law of the State regarding corporations, in force at the time this charter was granted, and which the Legislature declared should not apply to this Corporation. The 7th section of the Act concerning corporations, approved March 19, 1845, provided that 'The charter of every corporation that shall hereafter be granted by the Legislature shall be subject to alteration, suspension, and repeal, in the discretion of the Legislature.' As the charter in controversy was granted in 1853, it would have been subject to this general law if the Legislature had not, in express terms, withdrawn from it this discretionary authority. Why the necessity of

doing this if the exemption from taxation was only understood to continue at the pleasure of the Legislature?"

Note particularly the underscored portion of the foregoing opinion in part set out, being an enactment of the State Legislature of Missouri in the year 1845, and carried into the 1855 revision and found there as section 7 chapter 34, page 371, and which statutory provision was the law of this state at the time of the enactment by the Legislature in 1851 in reference to William Jewell College. It will be noted also that in the Act of 1851 this general law was not withdrawn from operation in the tax exemption privilege granted William Jewell College.

The act of March 19, 1845 will be noted later.

The rule has been declared in Missouri over and over that a charter grant by the state legislature creating a corporation for educational purposes, constitutes a contract between the state and the corporation which could not thereafter be violated. See *Sloan v. R. R. Co.* 61 Mo. 30. *Scotland County v. Ry. Co.* 65 Mo. 123, 134. *State ex rel. v. Greer* 78 Mo. 188, 190. It will be observed that in each of the above cases the tax exemption was included as part of the charter grant of corporate rights.

The Supreme Court of this state in *State ex rel. v. St. Joseph's Convent of Mercy*, 116 Mo. 575, had under construction a charter granted to the defendant incorporating it in February 1857, the charter grant containing a tax exemption clause. It was sought to tax the property of the corporation. It is stated in the opinion that the charter was granted subject to the laws in force in 1855, referring to the act of March 19, 1845. The court at page 580 of the opinion further said:

"We are unable to see why the constitution of 1875 should receive, as to these sections, a different construction from that of 1865. As to prospective legislation, they are both clear and specific, but in neither do we discover any intention that they should act retrospectively.

The rule has often been announced in this state that a general affirmative statute does not repeal a prior special statute, unless negative words are used or the two acts are irreconcilable. *Manker v. Faulhaber*, 94 Mo. 430, and cases cited; *Sedgwick on Construction of Statutory and Constitutional Law* (2 Ed.), 98. And, applying this rule, it has been held in other states and in England that a law imposing a general tax on all lands in the state does not repeal a prior special law exempting the property of special corporation from taxation. *State v. Minton*, 23 N. J. L. 529; *Williams v. Pritchard*, 4 Term. Rep. 2; *Blain v. Bailey*, 25 Ind. 165."

We call attention to the fact that the last named opinion was written in Division Number 2 and concurred in by Burgess, J., only, Sherwood, J., not sitting.

In *State ex rel. Morris v. Board of Trustees of Westminster College* 175 Mo. 52, the court had for consideration the right to recover taxes from the trustees. The defendant claimed its charter existence and powers under four separate acts of the general assembly of Missouri incorporating it as an educational institution. The grant of date February 25, 1857, contained the tax exemption provision. All of the enactments seemed to have been considered as making up the charter of the defendant. On the question of whether or not the act granting tax exemption to defendant had been repealed the court at page 60 of the opinion said:

"At the date of this charter, the General Assembly had authority to exempt the property from taxation, there being no restriction on the power of the General Assembly in that respect under the Constitution of 1820.

The Constitution of 1865 and that of 1875 put limitations on the power of the General Assembly in the matter of exempting property from taxation, but those provisions were intended to be prospective only in their operations; they were not intended to impair the obligation of a contract into which the State had previously entered. (St. Vincent College v. Schaefer, 104 Mo. 261; State ex rel. v. St. Joseph Convent, 116 Mo. 575.) We hold that the property of this corporation held by it for its corporate purposes is exempt from taxation."

In the case of State ex rel. Waller, Collector, v. Trustees of William Jewell College 234 Mo. 299, the Act of 1851 (Laws 1851, p. 64), was also, as stated, under consideration, on the question of whether or not the use of the word 'lands' in the act also included personal property. In that case the Act of 1851 was assailed as a tax exemption privilege and it was urged that the act had been repealed by subsequent constitutional and statutory provisions. At page 319 of the opinion, Graves, J., said:

"It is next urged that this statute has been repealed by subsequent constitutional and statutory provisions. The claim is made that there is a direct repeal of the law or an attempted direct repeal of the law. The question, however, has been fully settled by the adjudications of this court upon similar statutes, and we shall not re-open nor re-argue it. (St. Vincent's College v. Schaefer, 104 Mo. 261; State ex rel. v. Westminster College, 175 Mo. 52)."

It must be said of the last named case that from the concurring and dissenting opinions filed there was not a majority concurrence in the above quotation.

However, the dissenting opinion concurred in by three judges went off on the proposition that the word 'lands' did not include personal property.

The case of State ex rel. Morgan v. Hemingway 272 Mo. 187, was a suit to collect certain taxes from the defendant, a private individual. A special act of the Legislature made the lands of the defendant part of the City of Glasgow, Missouri, the act providing that the mayor and councilmen should not have the power to levy and collect taxes on such real estate, unless the same was laid off into lots. It was not laid off into lots. The City of Glasgow was incorporated by a special charter of the Legislature. Thereafter the City of Glasgow incorporated as a city of the fourth class under the general laws of the state. The plaintiff claimed that the act exempting defendant's lands from taxation had been repealed by constitutions adopted and statutory enactments thereafter passed. The defendant claimed such constitutional provisions and legislative acts were prospective in character and did not operate as a repeal of the tax exemption act as applied to the defendant's land. The court held that the constitutions subsequently adopted and statutory enactments subsequently passed were not prospective as to the act exempting defendant's land from taxation. However, there was no consideration for the passage of the act exempting defendant's lands, and that case does not present the same question as is presented here where a tax exemption has been granted to an educational institution. The opinion in the latter case does not refer to any of the Missouri cases herein mentioned, nor are any of them undertaken to be expressly overruled.

All of the foregoing Missouri cases, except the latter one, construed charter grants where the tax exemption was contained within the grant itself. The case of the President, etc., of St. Vincent's College v. Schaefer 104 Mo. 261, is substantially the same in facts as is the present case. There the legislature, by act of February 9, 1853, exempted property of the plaintiff from taxation and on February 27, 1853, by act of the legislature certain persons were created a body corporate with the name of the plaintiff. It was insisted that the constitution of 1875 and Section 6659 of the Revised Statutes of 1879 repealed the tax exemption act. The court at page 267 of the opinion said:

"Acts like the one in question, exempting corporations from taxation, constitute contracts, and the state has no power to impair the obligations of such contracts, unless that right is reserved. The right of the legislature, unrestrained by constitutional prohibitions, to grant irrevocable exemptions from taxation is no longer an open question. *Mechanics' Bank v. City of Kansas*, 73 Mo. 555, and cases cited; *Cooley on Const. Lim.* (5 Ed.) 340; *Home of the Friendless v. Rouse*, 8 Wall. 430; *Washington University v. Rouse*, 8 Wall. 439."

It is to be noted that the act of March 19, 1845, section 7, chapter 34, Revised Statutes Missouri 1855, is not mentioned in the latter opinion, and naturally under the holding of the court it would not be because if the constitution of 1865 and 1875 and the pertinent statutory provisions, which may be claimed repeal the act of 1851, are prospective in their operation and effect then the act of March 19, 1845, as well as the observations of the Supreme Court of the United States in the *Home of the Friendless v. Rouse*, supra, are inapplicable. Also any question of a violation of the obligation of a contract drops out.

On the general right of the legislature to grant statutory tax exemptions see the

*Northwestern University v. The people* 99 U. S. 309, 25 L. ed. 387, 61 C. J. 382, 384, 408.

Under the decisions of the courts in this state as they now stand, we are of the opinion that none of the provisions of the constitution of 1865 or of 1875 nor any statutory enactments have served to repeal the act found in *Laws of Missouri 1851*, page 64.

#### CONCLUSION.

We are of the opinion that the property purchased by the trustees of William Jewell College at fore-

Honorable James S. Rooney

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closure sale, where the endowment funds of the college had been loaned on the security of such lands for repayment, is exempt from taxation by virtue of the provisions of the act of the legislature of Missouri found in Laws of Missouri 1851, at page 64, so long as said money has been loaned in the exercise of the proper functions of William Jewell College as a college.

Yours very truly,

GILBERT LAMB  
Assistant Attorney General.

APPROVED:

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ROY McKITTRICK  
Attorney General.

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