

TAXATION: Property of Hannibal-LaGrange College not exempt.

11-18
November 12, 1935.



Honorable Barker Davis,
Prosecuting Attorney,
Lewis County,
Canton, Missouri.

Dear Sir:

This department is in receipt of your request for an opinion as to the following state of facts:

"Will you please furnish me an opinion as to whether the County of Lewis can assess, levy and collect all State and County Taxes on real estate owned in said county by Hannibal-LaGrange College of Hannibal, Marion County, Missouri.

"The Acts incorporating La Grange College, formerly at La Grange, Lewis County, Missouri, are: 'An Act Incorporating LaGrange Male and Female College, March 12, 1859.' and Laws of Missouri 1871, charter approved March 30, 1872.

"The present college and owner of real estate in question was formed by merger under Sections 5020 to 5023, inclusive, Revised Statutes of Missouri, 1929, Certificate from Secretary of State, dated September 22, 1928.

"The real estate involved in this county consists of land and buildings (formerly used and occupied by LaGrange

College) at La Grange, Missouri, a city in this county under special charter, several houses in said city and farms in this county.

"This property has been assessed and carried for taxation as other property since 1928, and as it is delinquent is being advertised under present law, and my County Collector is asking for my opinion on this question."

Laws of Missouri, 1871-2, page 226, provides:

"Section 1. That an act entitled 'An act to incorporate LaGrange Male and Female College, at LaGrange, in Lewis county,' approved March 12, A. D. 1859, be amended by the addition of a new section, to be numbered section 13, and to read as follows: Section 13. That for the purpose of creating an endowment for said corporation, the proceeds of which shall be used and applied in good faith to the purposes of education, and for no other purpose, the said corporation may acquire, hold and possess any real or personal property, not exceeding the value of two hundred thousand dollars, exempt from taxation for any purpose whatsoever, except for state revenue and state indebtedness.

"Section 2. This act shall take effect and be in force from and after its passage.

"Approved March 30, 1872."

At the time this statute was enacted the Constitution of Missouri adopted in 1865 was in effect. Section 16 of Article XI of this Constitution provides:

"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."

By reason of this provision of our Constitution as it stood at that time, only the property of public schools might be exempted from taxation.

In the case of Cook v. School District No. 12, 21 Pac. 496, the court said:

"A public school is one that derives its support in whole or in part from moneys raised by taxation."

In the very early case of St. Joseph's Church v. Assessors of Taxes, 12 R. I. 19, the court said:

"The lots and buildings in question belong to St. Joseph's Church, a Roman Catholic Church in the city of Providence, which has been incorporated under the laws of the State, in its corporate capacity, and is held and used by the church exclusively for its parochial schools. The lots and buildings were purchased with moneys contributed for the purpose of establishing the schools, and the schools are maintained by contributions given from time to time to the officers of the church for their maintenance. The schools are gratuitously opened to all, without distinction of sect, who desire the education which they furnish. They are, however, managed and controlled exclusively by the officers of the church. The petitioners claim that they are 'free public schools,' and as such entitle the lots and buildings where they are established to exemption from taxation under the clause of cap. 533 above recited. And undoubtedly if they are 'free public

schools' in the sense in which those words are there used, the claim is just.

"We think they are not free public schools in that sense. The statutes of the State contain frequent mention of public schools, and, uniformly, where the words occur, they signify the schools which are established, maintained, and regulated under the statute laws of the State. See Gen. Stat. R. I. cap. 47, sec. 1; cap. 53, Secs. 8, 9 and 22; cap. 58, Secs. 1, 10, and 13. We think the words were intended to have the same meaning in the statute under which the exemption is claimed. Such statutes are strictly construed."

In view of the foregoing, it is the opinion of this department that the Hannibal-LaGrange College is not a public school within the meaning of the Constitution of 1865. It therefore follows that the exemption provided for in Laws of Missouri, 1871-2, page 226, is unconstitutional and void.

If the property of this College is to be exempted from taxation, therefore, it must be by reason of the Constitution of 1875. Sections 6 and 7 of Article X of our Constitution provide:

"Section 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.

"Section 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. This section (Section 9743, R. S. Mo. 1929) provides 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."

CONCLUSION

In view of the foregoing, it is the opinion of this department that the only exemptions from state, county or local taxation that may be granted to the Hannibal-LaGrange College are as follows: 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 educational purposes, or for purposes purely charitable.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

JWH:NR