

CHARITABLE TRUSTS--TAXATION: Property located in a city used exclusively for charitable purposes, to the extent of one acre, is exempt from taxation for State, County or local purposes.

May 27, 1935.

FILED
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Honorable Rex H. Moore
Prosecuting Attorney
Grundy County
Trenton, Missouri

Dear Sir:

Your request for an opinion, dated May 11, 1925, reads as follows:

"I am enclosing herewith a certified copy of an irrevocable trust agreement executed by Dr. J. B. Wright, of this city, on September 20, 1932, together with a certified copy of a warranty deed executed by Dr. J. B. Wright on September 21, 1932, conveying the legal title to the property therein described to the Trenton Trust Company as trustee.

"Under and by virtue of the provisions of the trust agreement, title to the property therein named is to be held by the trustee and the property maintained and operated by the general staff, to be appointed, to care for the poor and unfortunate of Trenton and Grundy County. The property is also to be operated as a hospital and patients admitted from whom the staff may collect fees which, in turn, are to be used to maintain the buildings.

"The grantor in the trust agreement is occupying a part of the premises described in the agreement and maintains his office in the hospital building.

"The question which has arisen, and which we should like to have an opinion from your office on, is whether or not the

property described in the trust agreement is taxable during the life of the grantor and during the period for which it is to be used thereafter for charitable purposes."

Article X, Section 6, Missouri Constitution 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 building 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."

We take judicial knowledge that Trenton, Missouri, is an incorporated city.

Under the above constitutional provision we see that the Legislature is authorized to exempt lots in the City of Trenton, to the extent of one acre, with the buildings thereon, when the same is being used exclusively for purposes purely charitable.

Pursuant to the constitutional provision the Legislature passed Section 9743, R. S. Mo. 1929, exempting certain real estate from taxation and it provides in part as follows:

"* * * *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 exempt from taxation for state, county or local purposes."

In the case of State ex rel. v. Powers, 10 Mo. App. 263, very similar facts were construed in the light of this constitutional provision, and the Court said at l. c. 268:

"It appears from the pleadings in the present case, that the whole object of the institution is charity; nobody connected with it can derive any profit from the work carried on there; any profit derived from pay patients is applied exclusively to the charitable purposes of the institution; and every part of the building is used exclusively for a hospital. The object being clearly charitable, and exclusively so, and all ideas of private gain, profit, or advantage being excluded, we are unable to see any reason for holding that the purpose is not 'purely charitable' within the meaning of the law."

The above case was affirmed by the Missouri Supreme Court in 74 Mo. 476.

According to the trust deed attached to your request, the lots and improvements in the City of Trenton which were conveyed to the Trenton Trust Company, in trust, on September 21st, 1932, as recorded in Book 199, page 184, the terms of the trust are not set out in the recorded warranty deed, but are referred to in the warranty deed where it describes the grantee as a trustee "under trust agreement dated September 20, 1932." You have submitted a copy of a trust agreement of that date which is certified to by a notary as a true copy, but nothing on its face shows that it was ever recorded. For all the record shows, as per the trust agreement which you have exhibited, there may be some other trust agreement executed as of the same date which would be enforceable under the terms of the deed as a prior trust

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agreement and at the same time not be a charitable trust agreement at all. The grantee, known as "The Trenton Trust Company," is incorporated with power to handle trusts which are not charitable and at no events are tax exempt. This trust agreement should be recorded and the recorded agreement should show that the terms of the trust agreement in force be not speculative and that The Trenton Trust Company is the trustee of what purports to be a charitable trust.

We are forced to assume that the trust agreement submitted is a copy of the trust agreement referred to in the warranty deed, and that no other trust agreements exist. There is no duty on the county assessor to make any such assumption and until it be recorded he should assess the property for taxation.

CONCLUSION

Under the provisions of the submitted trust agreement, if it be truly the trust agreement referred to in the submitted deed, certain of the patients receivable at the hospital are expected to pay for the hospitalization they receive, and the profit derived is to be applied exclusively to the charitable purposes of the hospital. With those patients whom the general staff, charged with the management of the hospital, determine to be deservingly poor there is no charge. No person connected with the hospital is to derive any profit from the work carried on there.

We are of the opinion that the property described in the trust agreement, to the extent of one acre, is not taxable during the period that it is actually being used as provided by the trust agreement.

The actual use of the property for the purposes and under the conditions described in the trust agreement is, in our opinion, a use which is exclusively for charitable purposes and as allowed by the Constitution and provided for by legislative act. When so used it is exempt from taxation to the extent of one acre.

The fact that the grantor be living does not have any bearing on the question as to whether the property, to the extent of one acre, be exempt from taxation as property being used exclusively for charitable purposes. The fact

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that the grantor utilizes a portion of the building by occupying a small part of the premises and maintaining his office in the hospital building, does bring the use of the property without statutory exemption from taxation of property being used exclusively for charitable purposes. In the light of the Powers case, supra, the fact that patients with money are expected to pay for hospitalization they receive does not bring the use of the property without the statutory exemption from taxation of property being used exclusively for charitable purposes.

Respectfully submitted.

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED;

ROY McKITTRICK

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