

TAXATION: When property of a corporation is exempt from taxation on the ground that it is devoted exclusively to religious and educational purposes.

June 10, 1936.

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Hon. E. W. Allison,
Prosecuting Attorney,
Phelps County,
Rolla, Missouri.

Re: Order of Cardinal Mercier of
Rolla, Missouri, a corporation.

Dear Sir:

We wish to acknowledge your recent letter and enclosed articles of association requesting an official opinion relative to whether or not the real estate or any other property owned by the above captioned corporation is subject to taxation, and regret that, due to the pressure of State business, we have been unable to give you a more prompt reply.

In an opinion rendered by this department under date of June 22, 1934, to Mr. Edward Schlichter, Secretary of Salisbury Lodge I. O. O. F., a copy of which we are enclosing, we held that the test for determining whether a building is subject to taxation was not the number of good purposes to which a building may be put, nor the amount of good derived by the general public in the operation of such purposes, but whether the building is used exclusively for religious, educational or charitable purposes. If it is used for one or more commercial purposes, it is not exclusively used for the exempted purposes and is subject to taxation. This test is applicable in the case of the above mentioned corporation.

The opinion rendered to Mr. Schlichter deals only with real property and not with respect to "any other property". The court in the case of *The City of Kansas v. The Kansas City Medical College*, 111 Mo. 141, 1. c. 145, makes the following statement with respect to exemption of personal property from taxation where same is used exclusively for religious worship, for schools, or for purposes purely charitable:

"As will be readily seen, the only question arising upon this record is whether the furniture and appliances used by the

defendant in its medical college are subject to taxation. The question is restricted to the personal property of the defendant so used.

"It is conceded that the lot and buildings used for the college are exempt by the general law of the state, but the contention of the city is that the constitution and statute alike limit the exemption to 'the lot with the buildings thereon,' and does not extend to the personal property. Whereas, the defendant claims that the exemption extends to, and was intended to extend to, 'whatever property is proper and necessary for said school and to the enjoyment and management of said college.'

"By section 6 of article 10 of the constitution, the legislature is authorized to pass a general law exempting from taxation 'lots in incorporated cities or towns * * * 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 * * * for schools.' The legislature, in pursuance of this grant, by section 7504, Revised Statutes, 1889, has made the exemption just as broad as the constitution has empowered it to do.

"Section 7 of article 10 of the constitution provides that 'all laws exempting property from taxation other than the property enumerated in section 6 of the same article shall be void.' So that it only remains for us to determine whether the words, 'the lot with the buildings thereon,' can be construed to include the personal property used in the building and not a part of the realty in law. We are very clear that they do not.

"The evident purpose was to exempt a certain amount of real estate. This is obvious from the immediate context. In the next succeeding clause the exemption of agricultural and horticultural property is extended to both real and personal property. Neither the language of the exemption, nor the provisions in pari materia will, in our opinion, admit of any other construction than that we have given it. The purpose is clear to limit the exemption to real estate and to a definite amount."

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From an examination of the enclosed articles of association, we are of the opinion that the real property of the above captioned corporation is exempt from taxation if same is used exclusively for religious or educational purposes, and if such realty comprises "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" (Article X, Section 6, of the Missouri Constitution, and Section 9743, R. S. Mo. 1929).

We are of the opinion that the personal property of such corporation is not exempt from taxation.

Respectfully submitted,

WM. ORR SAWYERS,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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