

SALES TAX: Sales made by stationery store of St. Louis University not subject to taxation.

9/18

September 17, 1936.



Rev. Alphonse M. Schwitalla, S.J.,  
Dean St. Louis University School of Medicine,  
1402 South Grand Boulevard,  
St. Louis, Missouri.

Dear Father Schwitalla:

This department is in receipt of your letter of September 15 requesting an opinion as to whether sales made by the stationery store conducted by St. Louis University are subject to the sales tax. In this connection, we have at hand correspondence between you and your attorney and the State Auditor wherein it was determined by the State Auditor that these sales were subject to the Act.

We further note in your letter of October 18, 1935 to Mr. G.H. Bates, Sales Tax Supervisor, that these stores are owned by the University and organized on a non-profit plan. Assuming these facts to be true, it is our conclusion that sales made by the stationery store are not subject to the sales tax for the following reasons:

Section 1, subsection (c), Laws of Missouri 1935, p. 413, provides:

"'Business' includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either direct or indirect and the classification of which business is of such character as to be subject to the terms of this Act. The isolated or occasional sale of tangible personal property, service, substance or thing, by a person not engaged in such business does not constitute engaging in business, within the meaning of this act."

It is clear from this definition of the term "business" that a store organized and operated on a non-profit basis for the benefit of students would not be within the intent or contemplation of this section of the Act. It was obviously the intention of the Legislature to subject to taxation only those sales made with the object of gain, benefit or advantage, and sales not so made cannot be construed to be within the meaning or the intent of the Act.

However, there is, in our opinion, a further reason why these sales are exempt from taxation under this Act. Section 45. Laws of Missouri 1935, p. 426, provides:

"In addition to the exemptions under Section 3 of this Act there shall also be exempted from the provisions of this Act all sales made by religious, charitable and/or Eleemosynary Institutions, in the conduct of the regular religious, charitable and/or Eleemosynary functions and activities."

In the case of Jackson v. Phillips, 14 Allen (Mass.) 539, the Court said:

"A charity, in the legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government."

Judge Van Valkenburgh, in the case of Gossett v. Swinney, 53 F. (2d) 773, said with reference to the above citation:

"Many more definitions and citations of the same general character might be added, but the foregoing would seem to be sufficient to establish the general, as well as the specific, holding and policy of Missouri."

While these definitions of the word "charity" tend to substantiate the modern conception that activities of an educational nature are necessarily charitable in character, perhaps the case best illustrative of this proposition is the case of Trustees of Washburn College v. O'Hara, 90 P. 234, wherein it is said:

"The advantages, direct and indirect, which the highly educated citizen imparts to the general public cannot be estimated. Every advancement made in the scientific, mechanical, moral, literary or other pursuits of life adds to the general sum of human knowledge, comfort and happiness. As higher education increases, civilization advances. The elevating and beneficent influences which the general public receives from educational sources make every citizen a beneficiary thereof and furnish complete justification for placing every educational trust not strictly private and having increased learning for its object in the category of public charities."

#### CONCLUSION

In view of the fact that the stationery store in question is operated on a non-profit basis for the benefit of students of St. Louis University, and in view of the further fact that it is intimately connected with and a part of the activities of St. Louis University, it is our opinion that by reason of Section 1, subsection (c) and Section 45, Laws of Missouri 1935, p. 413, sales made by this store are exempt from the provisions of this Act.

Respectfully submitted,

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

APPROVED:

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ROY McKITTRICK,  
Attorney General.