

Sub-section (a) of Section 2, is as follows:

"Upon every retail sale in this State of tangible personal property a tax equivalent to two (2) per cent of the purchase price paid or charged, or in case such sale involves the exchange of property, a tax equivalent to two (2) per cent of the consideration paid or charged, including the fair market value of the property exchanged at the time and place of the exchange".

Section 6 of the Act is as follows:

"It shall be the duty of every person making any purchase or receiving any service upon which a tax is imposed by this Act to pay the amount of such tax to the person making such sale or rendering such service; any person who shall wilfully and intentionally refuse to pay such tax shall be guilty of a misdemeanor."

Special Rule No. 3 provides in part as follows:

"There is hereby specifically exempted from the provisions of this Act and from the computation of the tax levied, assessed or payable under this Act such retail sales as may be made between this state and any other state of the United States, or between this state and any foreign country, and any retail sale which the State of Missouri is prohibited from taxing under the Constitution or laws of the United States of America, and such retail sales of tangible personal property which the General Assembly of the State of Missouri is

Prohibited from taxing or further taxing by the Constitution of this state".

Section 46 of the Sales Tax Act which is in words as follows:

"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 or to religious, charitable, eleemosynary institutions, penal institutions and industries operated by the Department of Penal Institutions or educational institutions supported by public funds or by religious organizations, in the conduct of the regular religious, charitable, eleemosynary, penal or educational functions and activities, and all sales made by or to a State Relief Agency in the exercise of relief functions and activities."

The above section makes exemptions as to eleemosynary institutions and charitable institutions. By a special rule No. 4 of the rules and regulations relating to the Missouri Sales Tax Act of 1937, the State Auditor has ruled that sales by or to charitable or eleemosynary institutions are exempted from the provisions of the Sales Tax Act.

Such rules and regulations as are made and promulgated by the officers whose duty it is to administer and to enforce the provisions of the Legislative Acts are to be given the most respectful consideration (Boyer Campbell Company vs. Frye, 260 N. W. 165).

This leads us to the question of whether or not county institutions maintained for the aged poor persons are eleemosynary or charitable institutions and if they are, whether the purchases made by the county for the support of such institutions are exempt from the provisions of the sales tax.

Eleemosynary institutions as are used and defined in New York Poor Laws, means a place for the poor, maintained at the public expense and are called almshouses. (People vs. Lyke, 53 N. E. 802). Under Words and Phrases, Series One, almshouse is defined by Webster as a house operated for the poor. Under Words and Phrases, Second Series, the word "eleemosynary" is defined as relating to charity, alms or almsgiving. A poorhouse and the farm connected for the employment and maintenance of the poor of a county, is purely a public charity, because it is devoted to the employment and support of the poor of the county without regard to sex,

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race or creed: (Township of Comru vs. Directors of Poor for County of Berks - 112 Pa. Sta. Reports, l. c. 270).

By Article 4, Chapter 70 R. S. Mo. 1929, the Legislature has set up a system for the taking care of the poor persons of the county and has imposed the duties upon the county court to provide for the proper support of such persons from the public funds. Although the county is one of the Political subdivisions of the State that is included, within the definition of the word "person" in Sub-section (a) of Section 1 of the Sales Tax Act, and seems to be included with those which are liable for the payment of the tax unless it is exempt by some other section of the Act.

In view of the fact that by Section 46 of the Sales Tax Act, it is provided that, eleemosynary and charitable institutions are exempt from the provisions of the Sales Tax Act and in view of the fact that county infirmaries or poor houses, are classed as eleemosynary or charitable institutions, this office is of the opinion that goods purchased by the county and used at the county infirmaries are exempt from the payment of the 1937 Sales Tax.

In consideration of the foregoing, this office is of the opinion that the county Infirmaries and County Farms come within the classification of Eleemosynary or Charitable Institutions which are included within the classes exempted from the Sales Tax, and that the sales by or to the County for the use of the Infirmaries and County Farms are exempt from the Sales Tax Act.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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