

SALES TAX

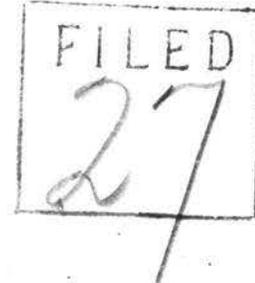
Charitable Institutions
Educational "
Exemption

{ profit plan, in which deficits, if any, are
{ paid by gifts from benevolent persons, and
{ which receives all students applying, whether
{ able to pay for such instruction or not, comes
{ within class of public charitable institution
{ and is exempt from provisions of 2% Sales
{ Tax Act.
{
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November 10, 1937

11-12

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Attorneys-at-Law
Nevada, Missouri



Dear Sirs:

We have received your request dated October 29th, 1937, for an official opinion as to whether Cottey College, of Nevada, Missouri, is within the class of institutions exempted from the provisions of the two per cent sales tax by Section 46 thereof, which request is as follows:

"Knowing the policy of your Department in not giving opinions to any except public officials, nevertheless I write you in regard to the following question because of the nature of the college involved, which might be quasi-public. Cottey College in Nevada, Missouri, is a junior college maintained by the P.E.O. Sisterhood. Tuition is charged to part of the students and the funds for running the college arise approximately one-half from the tuition charged and the other half by direct gifts from the P.E.O. Sisterhood. This institution is not run for profit.

"The question has come up as to whether this college should pay sales tax on commodities purchased for use by the school.

"In the Laws of Missouri, 1937, page 555 there appears the new 2% Sales Tax Act, and on page 568, Laws of 1937, Section 46, there appear the exemptions from the tax, which section reads 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 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.'

"Cottey College is not strictly an institution supported by public funds, nor is it supported by a religious organization inasmuch as the P.E.O. is not primarily a religious organization. But according to our views, we do not believe this tax should apply. Because of the circumstances and the nature of the college we would very much appreciate your giving to us your opinion on this matter."

If the institution is exempt from the provisions of this Act, it is by virtue of the provisions of the Act as set out in Section 46 thereof, which is 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."

In your letter of request, you state that Cottey College is not strictly an institution supported by public funds, nor is it an educational institution supported by a religious organization, but you do state that this institutions receives about one half of the amount required to operate on from tuition from pays tudents and the remainder is made up by gifts direct from the P.E.O. Sisterhood which is a non profit organization incorporated under the laws of Iowa, with its purpose announced as charitable and educational.

You further state in your letter of November 4th, 1937, pertaining to this request, that Cottey College is not an endowed institution in the usual sense, although the alumnae are working to establish an endowment fund.

Upon an examination of the charter and articles of incorporation of this institution in the Secretary of State's office, dated February 25, 1925 I find,

" * * * that the purposes of this corporation are to maintain an institution for instruction to females in every branch of knowledge and to promote the cause of christian education and learning and to fit those who come within the range of its influence for a better physical and spiritual life; and to that end shall have and enjoy all the privileges and rights and powers of all colleges of the highest grade in the United States."

By said charter, said college is also authorized to hold property, real and personal and to accept endowments. We further find from the aforesaid articles of incorporation that Virginia Stockard, the founder of Cottey College, conveyed the real estate upon which the college is located to this institution and provided that the college corporation had no power to mortgage same and authorized the institution to consolidate with any other institution of learning under supervision of the M.E. Church, South.

83 A. L. R., People Ex Rel Nelson vs. Rockford Masonic Temple Building Association, at page 770, reads:

"As a general rule, the purpose for which a corporation is formed is shown by its charter."

The college was incorporated by authority of the provisions of Article II, Chapter 90, R. S. Mo. 1919 for the purposes aforesaid. While there is some evidence in the articles of incorporation and charter that this institution is supported by a religious corporation, we do not think there is enough to find that it is within that class of educational institutions supported by religious institutions to be exempted on that account.

Then, there is only one other class this institution could be placed if it is exempted by Section 46; and that is in the class of a charitable institution.

An alleged constitutional or statutory grant of exemption from taxation will be strictly construed. 61 C. J., page 392, para. 396; State ex rel. Y.M.C.A. vs. Gehner, 11 S. W. (2d) 30; School of Domestic Arts vs. Carr, 322 Ill. 563.

A claim for exemption can not be sustained unless it is thoroughly found to be within the letter and spirit of the law. Readlyn Hospital vs. Hath, 272 N. W., l.c. 92.

5 R. C. L. page 331, Section 56, reads as follows:

"A university which is organized as a private corporation without power to declare dividends and is dependent upon the income from its property and upon endowments and gifts for the funds to carry out the purpose for which it was created, the benefits of the institution being secured to all persons of good moral character who have sufficient preliminary education, is a charitable institution, and gifts thereto are valid charitable gifts. And the fact that a school requires its students to pay tuition does not change its character as a charitable institution."

Upon the question of what is a charitable institution

we find in the case of *School of Domestic Arts vs. Carr*, 322 Illinois, l.c. 568:

"A charity, in a 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 hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burthens of government."

Upon the definition of charity which benefits to the public, Judge Bond in the case of *Catron vs. Scarritt Collegiate Institute* in 264 Mo. at 723, l.c. 725 and 726, cites the following statement:

"Probably the most comprehensive and carefully drawn definition of a charity that has ever been formulated is that it is a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. It is immaterial whether the purpose is called charitable in the gift itself, if it is so described as to show that it is charitable in its nature. Another definition capable of being easily understood and applied is that given by Lord Camden as follows: 'A gift to a general public use, which extends to the poor as

well as the rich.' The theory of this is that the immediate persons benefited may be of a particular class, and yet if the use is public in the sense that it promotes the general welfare in some way, it has the essentials of a charity.'"

And citing as authority on such statement (5 R.C.L. pp. 291-292), Judge Bond in this case further quotes the following from 5 R. C. L. pp. 322 and 323 in 264 Mo. at page 727:

"Charity in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads."

From the foregoing facts and authorities cited, we find that even though Cottey College does make charges for tuition to the students who are able to pay, it does not receive enough money to operate upon and that the deficit is made up by the charitable organization; that by virtue of the authorities cited above, charges for tuition do not prevent the college from being within the classification of a charitable institution. The college realizes no profit from its operation, but in fact has to depend upon the benevolence of the P.E.O. Sisterhood for its existence and is organized for charitable and benevolent purposes.

From the articles of incorporation of Cottey College, we find that its doors are open to all females who desire instruction in every branch of knowledge and who desire a christian education to fit themselves for a better physical and spiritual life. It can not be questioned that such teaching in all its several branches is a benefit to the student, makes it possible for some of them to earn a living and does benefit the public.

CONCLUSION

We are, therefore, of the opinion that Cottey College is a charitable institution and that the sales of tangible personal property made by or to said college, being exempted by Section 46 of the Act, are not taxable under the provisions of the two per cent Sales Tax Act of Missouri, found at page 552, Session Acts of Missouri, 1937.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

TWB:RT