

PRIVATE SCHOOLS: A school incorporated under the provisions of Article X, of Chapter 32, of R. S. Mo. 1929, is entitled to hold property for corporate purposes up to an amount as indicated in Section 9743, R. S. Mo. 1929, and such property shall be tax exempt.

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Mr. W. A. Swearingen  
Assistant State Director  
National Youth Administration  
Jefferson City, Missouri

Dear Mr. Swearingen:

This will acknowledge receipt of your request for an opinion, which reads as follows:

"At the request of Mr. William E. Johnson of St. Joseph, Missouri, I am herewith forwarding to you the charter of the Johnson School of Business located at St. Joseph, Missouri. This institution is desirous of participating in the college aid program which is being conducted in this state by the National Youth Administration under the conditions set forth in the enclosed NYA Bulletin #5 dated August 10, 1936. On Page 2, Section 2, of this bulletin is set forth the conditions of eligibility of institutions for participation.

Will you please give this office a written opinion of the eligibility of this institution with reference to the non-profit making, tax exempt character of the institution according to its terms of organization as set forth in its charter."

Appended to your request is a copy of the National Youth Administration Bulletin No. 5 relating to the student aid program for 1936 and 1937, and the original Pro Forma Decree of Incorporation of the Johnson School of Business.

We have examined the Articles of Agreement of this School and it appears therefrom that this School is organized under the provisions of Article X, of Chapter 32, of R. S. No. 1929 relating to benevolent, religious, etc., associations, as a non-profit institution. As observed, the institution is organized as a non-profit school, but as to whether or not the school's business is being conducted in a non-profit manner, we can not pass upon so as to determine its eligibility for aid.

In respect to your question as to whether the institution is tax exempt, we direct your attention to Section 6, of Article X, of the Constitution of Missouri, which provides in part as follows:

"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 buildings 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."

The general law respecting exemptions of property from taxation when used for certain purposes, is found in Section 9743, R. S. Mo. 1929, and reads 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 exempted from taxation for state, county or local purposes."

In the case of State ex rel vs. Johnston 214 Mo. 656, the court had before it for consideration the above constitutional and statutory provisions and, in passing upon the question as to whether or not private military schools' property would come within the purview of the above statute, when the proprietor of the school resided within the school building with his family having no avocation except that of running a school, would such residence destroy the exemption? In passing upon this proposition, the court, at page 662, said:

"It is our opinion that viewed from the philosophy of the thing and measured by cardinal standards of legal interpretation, the right answer to that question is, No."

And, at page 663, the court further said:

"(b) The phrase 'exclusively used' has reference to the primary and inherent use as over against

a mere secondary and incidental use. (People ex rel. v. Lawler, 77 N. Y. Supp. l.c. 842, et seq.) If the incidental use (in this instance residing in the building) does not interrupt the exclusive occupation of the building for school purposes, but dovetails into or rounds out those purposes, then there could fairly be said to be left an exclusive use in the school on which the law lays hold. (First Unitarian Society v. Hartford, 66 Conn. l.c. 375.)"

In the case of the City of Kansas v. Kansas City Medical College, 111 Mo. 141, the court had before it for consideration the general law as above cited to determine whether or not the personal property of a college was exempt from taxation within the meaning of the statute and, in passing upon this question, said, at page 146:

"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

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a definite amount."

CONCLUSION

It is the opinion of this department that this institution is incorporated as a non-profit association, but as to whether or not the institution is operating as such is a question of fact we can not pass upon.

We further conclude that this institution's real estate is tax exempt to the extent of one acre if its real estate be in an incorporated city or town, or within one mile of the limits of any such city or town; and, lots one mile or more distant from such city or town to the extent of five acres with the buildings thereon, when such property is used exclusively for its corporate purposes.

Respectfully submitted,

RUSSELL C. STONE  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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