

CEMETERIES:

Land owned by cemetery company and
not used for burial purposes is
subject to taxation.

TAXATION:

January 8, 1937



Mr. Guy Wood
Clerk, County Court
DeKalb County
Maysville, Missouri

Dear Sir:

We wish to acknowledge receipt of your request for an official opinion under date of January 2, 1937, which reads as follows:

"Is the real estate of a cemetery company not used for burial grounds exempt from taxation?"

"The above question has arisen in this county in connection with a forty acre farm acquired by a cemetery association by virtue of a deed or foreclosure. That is the association loaned a certain sum of money that they had acquired by subscription to be used as a trust fund to take care of the expense of the cemetery.

"After acquiring the farm, which, of course is not adjacent to the burial grounds, they rented the farm and returned the net profits to the treasury of the association."

Section 6 of Article X of the Missouri Constitution reads, in part, as follows:

"The property, real and personal, of the State, counties and other municipal corporations, and cemeteries, shall be exempt from taxation."

In the case of State ex rel. v. Casey 210 Mo. 235, l. c. 248, the court held that the constitutional tax exemption of a cemetery association applies only to lands used for cemetery purposes, and not to the personal property of a cemetery association. The court said:

"It is quite clear that, under section 6 of article 10 of the Constitution, and section 9 of relator's charter, all of the land held by it for cemetery purposes is exempt from taxation for general purposes, but does it necessarily follow that its personal property and moneys on hand acquired from the sale of lots are also exempt from taxation? As a rule, all property is subject to taxation, and, therefore, laws exempting property from taxation are to be strictly construed, and the right of exemption established beyond a reasonable doubt. (Fitterer v. Crawford, 157 Mo. 51.) An exemption from taxation exists only where it is expressed in explicit terms, and it cannot be extended beyond the plain meaning of these limits. (State v. Wilson, 52 Md. 638.)"

In the case of State ex rel. v. Wesleyan Cemetery Association, 11 Mo. App. 560, suit was brought to collect taxes for the year 1877 which were assessed against certain lands of the Wesleyan Cemetery Association. The court said:

"This is correct. The constitutional provision in question recites that 'the property, real and personal, of

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the state, counties, and other municipal corporations, and cemeteries, shall be exempt from taxation.' "

"The court must have found that the property in question was, during the year 1877, used as a cemetery, and no other finding could have been made under the evidence."

In the above case, the court declared the law to be that since the premises were used as a cemetery at the time the taxes sued for were assessed, the plaintiff could not recover for the constitutional exemption was effective and eliminated the tax liability.

In your letter you state that the land in question belonging to the cemetery association is not adjacent to the burial grounds, and that said land is being rented by the association and profits are returned to the association.

CONCLUSION

It is the opinion of this Department that the land owned by the cemetery company and not used for burial purposes is subject to taxation. There was no intent in the constitutional exemption to exempt property of a cemetery association other than that real property used solely as a burial ground.

Yours very truly,

Wm. ORR SAWYERS
Assistant Attorney General.

APPROVED:

J. E. TAYLOR
(Acting) Attorney General.

ARH:HR