

TAXATION: City property to use of hospital is taxable, but hospital property used for charity is tax exempt in limited acreage.

October 13, 1938

Hon. Roy Coyne
Prosecuting Attorney
Jasper County
Joplin, Missouri



Dear Sir:

We acknowledge your request for an opinion dated October 10, 1938, which reads as follows:

"As Prosecuting Attorney of Jasper County, I will appreciate an opinion from you relative to the following questions:

"The City of Carthage owns as Trustee some three or four hundred acres of ground in Jasper County for the use and benefit of the McCune-Brooks Hospital of Carthage, Missouri. The assessor of this county has attempted to and has assessed this property, but the City of Carthage and the McCune-Brooks Hospital both claim that this property is exempt from taxation.

"A number of acres of this property held by the City of Carthage is over in the western edge of Jasper County. This, of course, does not apply to the hospital property.

"All of the title to the land held in this County is in this manner: To the City of Carthage for the use and benefit of the McCune-Brooks Hospital.

"These lands held by the City have been donations made by individuals for the hospital of the City of Carthage.

"I would like to have an opinion from you as to whether or not this land is taxable under our statutes. Understand that no part of this land is used either by the City or by the McCune-Brooks Hospital, but is far removed both from the City of Carthage and from the hospital."

No property is exempt from taxation in Missouri except that specifically exempted by law and in State ex rel. v. Gehner, 294 S.W. 1017, 1.c. 1018, 316 Mo. 694, the court said:

"The policy of our law, constitutional and statutory, is that no property than that enumerated shall be exempt from taxation."

We look to the Constitution and statutes to discover what property is tax exempt in Missouri. The Missouri Constitution, Article X, Section 6, relating to tax exemption, provides:

"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 of 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 above constitutional provision exempting from taxation the property of municipal corporations refers to such property as the city holds for its own use and not property held in trust, and in *City of St. Louis v. Wennicker*, 47 S.W. 105, 145 Mo. 230, the Supreme Court said at l.c. 238:

"We think that the property of a county or city exempted from taxation by the constitutional provisions hereinafore quoted, is that of which such county or city is the beneficial owner, which is held by it 'for its own use' and not merely in trust. It does not include that in which the only interest of the municipality is as trustee. We therefore hold that this real estate is not exempt from taxation."

From the holding in the above case, the title to the property in issue is no legal reason to claim that this hospital property be exempt from taxation as city property is exempt from taxation, because under the title the property is not held by the City of Carthage for the use of the City of Carthage. We find nothing in the Missouri Constitution or statutes specifically exempting hospital property from taxation. Since not tax exempt as city property for city uses, and since not tax exempt as hospital property, it must be that those claiming exemption are basing their claim on grounds that this property is hospital property used exclusively for purely charitable purposes under a general legislative tax exemption act. Your request does not state why this property is claimed as tax exempt, and as we read the Constitution and statutes on tax exemption, we can give no other plausible reason for claiming tax exemption on this property other than the general legislative tax exemption act on property used exclusively for charitable purposes.

Section 9742, R.S. Missouri, 1929, provides:

"For the support of the government of the state, the payment of the public debt, and the advancement of the public interest, taxes shall be levied on all property, real and personal, except as stated in the next section."

In the light of the Constitution, supra, which authorized the Legislature to pass general laws exempting property used exclusively for purposes purely charitable, the Legislature in Section 9743, R.S. Missouri, 1929, followed the language of the Constitution and provided tax exemption as follows:

* * * * * fourth, lands and other property belonging to any city, county or other municipal corporation in this state, including market houses, town halls and other public structures, with their furniture and equipments and all public squares and lots kept open for health, use or ornament; * * * * * 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."

The general rule of constitutional and statutory construction followed by the courts is to the effect that tax exemption provisions must be strictly construed against those claiming the exemption, and in *Fitterer v. Crawford*, 157 Mo. 51, l.c. 58, 57 S.W. 532, the court said:

"In the construction of laws exempting property from taxation it is a cardinal principle that they must be strictly construed. As a rule all property is liable to taxation, exemption the exception, and it devolves upon the person claiming that any specific property is exempt to show it beyond a reasonable doubt."

Vol. 2, *Cooley on Taxation*, (4 Ed.), pages 1403-1408, states the rule on strict construction as it relates to exemption from taxation, and reads in part as follows:

"An intention on the part of the legislature to grant an exemption from the taxing power of the state will never be implied from language which will admit of any other reasonable construction. Such an intention must be expressed in clear and unmistakable terms, or must appear by necessary implication from the language used, for it is a well-settled principle that, when a special privilege or exemption is claimed under a statute, charter or act of incorporation, it is to be construed strictly against the property owner and in favor of the public. This principle applies with peculiar force to a claim of exemption from taxation. Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and an alleged grant of exemption will be strictly construed and cannot be made out by inference or implication but must be beyond reasonable doubt. In other words, since taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it. Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the state has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favor would be extended beyond what was meant."

CONCLUSION

We find nothing in the Missouri Constitution or statutes exempting property from general taxes in Missouri simply because same be used for hospital purposes.

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The Constitution and the statutes exempt municipal property from general taxes, but we are of the opinion that property held by a municipal corporation in trust for the use of the McCune-Brooks Hospital Company is not such city property as the Missouri Constitution and statutes exempting city property intended as tax exempt city property. We are of the opinion that the only city property intended in Missouri as tax exempt was such property held by a municipal corporation for the use of the municipal corporation.

We are not familiar with the facts relating to the organization and operation of the McCune-Brooks Hospital Company, or the nature of any use of any property by said hospital. In Missouri the actual use of property exclusively for charitable purposes may determine its status as non-taxable property, regardless of whom the deed sets out as legal and equitable owners of title.

We are of the opinion that if none of the property be used for charitable purposes, then all of said property is subject to general taxes without exemption. On the other hand, we are of the opinion that a limited acreage of the real estate with buildings thereon which is being used exclusively for charitable purposes is entitled to a tax exemption from general taxes, under the Constitution and statutes of Missouri, as follows: Up to one acre tract, with buildings thereon, located in any incorporated city or within one mile of said city, and also up to five acre tracts, with buildings thereon, located within one mile or more distant from such city, conditioned upon said property being used exclusively for charitable purposes.

Respectfully submitted,

WM. ORR SAWYERS
Assistant Attorney General

APPROVED By:

J.E. TAYLOR
(Acting) Attorney General

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