

TAXATION:

CEMETERIES:

Only lands used for a cemetery or burial grounds are exempt from taxation, and real estate owned by a cemetery association and used for farming and residential purposes is not exempt.

August 23, 1938

Mr. John B. Smoot
Prosecuting Attorney
Scotland County
Memphis, Missouri



Dear Sir:

This is in reply to yours of August 19th requesting an official opinion from this department, which is as follows:

"May I have an opinion from your office relative to the application of Section 6 of Article 10 of the Constitution of Missouri and of the interpretation given to that section by the Supreme Court of Missouri in State ex rel. versus Casey, 210 Missouri Reports 235, to the following facts, to-wit:

"In 1931, one James D. Bondurant desiring to make a gift to the Middle Fabius Camp Ground Cemetery Association of Scotland County, Missouri, purchased a 50 acre tract of land near the site of the burial grounds of said cemetery association and had the land conveyed directly to the cemetery association. It is recited in the deed that James D. Bondurant shall have the right to manage said lands during his lifetime for the use and benefit of the cemetery association. This farm is used by the sexton employed by the cemetery association and is furnished to him rent free.

"Immediately after the acquisition of this land by the Middle Fabius Camp Ground Cemetery Association, the land was stricken from the tax rolls of Scotland County and remained off the tax rolls as exempt property until 1934, at which time the land was again placed upon the tax rolls and no notice served upon the association or any officer thereof of the fact until four years delinquent taxes had accrued against the land.

"It is the contention of the Cemetery Association that in so much as the land is used by the sexton and is furnished rent free, that the burial grounds is the beneficiary of the land; and for the further reason that at some future time this land will be used as a part of the burial grounds."

On the question of exemption from taxation of cemeteries, we find that Section 6 of Article X of the Constitution of Missouri provides 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."

A cemetery is defined as a place where human bodies are buried; a graveyard. *Smallwood v. Middlefield Oil Co.*, 89 S. W. (2d) 1086 (Tex.). In the same case the court said, l. c. 1090:

"The setting apart and appropriation of land as a burial ground effects in law an abandonment of its use and possession for all other purposes."

In the case of *Mt. Pleasant Cemetery Association v. City of Newark*, 98 Atl. 448, 89 N. J. L. 255, the court held:

"The term 'cemetery' does not include and render exempt from taxation tracts of land belonging to a cemetery company acquired by separate deed, and lying between high water mark and dock line of title river, separated from other cemetery property by railroad, when only small portion of tract is used for interments or is likely to be so used in the near future."

In the case of *State v. Lange*, 16 Mo. App. l. c. 470, the court said:

"The corporation owns two tracts of land divided and separated by a public highway, one consisting of lot 14, in James B. Clay's subdivision, and the other of lots 139, 140, 141, 142, and 143 of North Cote Brilliante subdivision, having acquired both tracts in 1867, about two years after its incorporation. Both tracts together do not exceed forty acres.

"On the larger of these two tracts, it has laid out a cemetery, and has subdivided part of it into lots which it has sold for purposes of interment. This tract never was assessed for taxation, it

being conceded that it is exempt under the terms of relator's charter. The smaller tract the corporation rents out to its sexton, who occupies it as a residence, and uses it for market and ornamental gardening, and who pays to the corporation for such use an annual rent of one hundred and fifty dollars. This smaller tract has been thus used ever since the corporation acquired it, and such use as far as the evidence shows may be continued for all time. It is this smaller tract which relator claims is also exempt from taxation on the ground that it is used for cemetery purposes. This use relator is endeavoring to establish by testimony tending to show that the money paid by the sexton is not by way of rent, but by way of a bonus for holding the position of sexton; that while the sexton raises vegetables on the land, and cultivates about one-half thereof for that purpose, which vegetables he sells in the open market, he also raises flowers and ornamental shrubs, which he sells to owners of lots in the cemetery across the way for the decoration of graves, and that many years ago some trees were planted on this lot with a view of using it as a cemetery at some future time. Also testimony tending to show that water from the well at the sexton's house is used by him for watering the graves on the other tract, for which service presumably he is likewise paid by owners of the lots, though the evidence is silent on that subject.

"It will be seen from the foregoing that we could arrive at the conclusion that this smaller lot is also a cemetery, only by artificial reasoning, and that we would have to refine to a considerable extent to bring it within the terms of the exemption granted.

This under the rules of construction applicable to such grants we are precluded from doing.

"We do not decide that the corporation has forfeited its right to hold this smaller tract exempt from taxation, we simply hold that the exemption never attached thereto, because whatever the purposes were for which it may have acquired it, it has never been and it is not now a cemetery."

As stated in State ex rel. v. Casey, 210 Mo. 235,

"Laws exempting property from taxation are to be strictly construed, and the right of exemption must be established beyond a reasonable doubt."

In the same case, the court held:

"Section 6 of article 10 of the constitution, ordaining that 'the property, real and personal, of the State, county and other municipalities, and cemeteries shall be exempt from taxation' does not exempt the personal property of cemetery companies from taxation. The words 'property, real and personal,' in that section, are separated from, and have no connection with, the word 'cemeteries.' The exemption extends only to cemeteries as such."

From your letter it appears that the 50 acre tract of land which was conveyed to the cemetery is held by the cemetery subject to the rights of the grantor to manage said lands during his lifetime and for the use and benefit of the cemetery association. It also appears that the sexton of the cemetery association uses this farm and does not pay any rent for it. Under the rule in the Casey case, supra, it appears that this farm comes within the class of property of the cemetery association, but it is not the cemetery. As stated in the Casey case, supra, the property of the cemetery association is not exempt from taxation.

It is only the cemetery which is exempt. If and when this 50 acre tract is used as a cemetery, then it will be in the class which is exempted by the provisions of said Section 6 of Article X of the Constitution.

CONCLUSION

From the foregoing, it is the opinion of this department that real estate owned by a cemetery association is exempted from taxation only when such property is used as a cemetery, in other words, when such real estate is used only as a burial ground. As the land to which you refer is not used as a burial ground, but for a farm and a place for the sexton to live, it does not come within the exempted class of cemeteries for taxation purposes.

Respectfully submitted

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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