

TAXATION (Title to real estate left to city
COUNTY COURT (by will vests in city after will is
probated, as of date of testator's
death and is thereafter tax exempt.

May - Eighth
1939



Hon. J. Carrol Combs
Prosecuting Attorney
Barton County
Lamar, Missouri

Dear Sir:

We are in receipt of your letter of May 2nd
which reads as follows:

"I would like to have the opinion of your
office on the following matter, both for
the benefit of the county court and because
of the fact that the state is interested
in the taxes.

"In 1935, one Lillian M. Belk-Sibley was
the owner of a considerable amount of
property in the City of Liberal, Barton
County, Missouri. In July of 1935 she
executed a will leaving a considerable
amount of residence property in Liberal,
Missouri, to the City of Liberal, Missouri,
for the purpose of selling the same to
create a trust fund for cemetery maintenance,
and she also left all of her business prop-
erties located on Main Street in Liberal,
including Lots 18 and 19 of Block 6, which
are now in controversy, to the City of
Liberal to be sold by said City for the
purpose of paving Main Street of Liberal,
Missouri.

"Mrs. Sibley died in August of 1935 and her

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will was immediately probated in the Probate Court of Barton County, Missouri. The executors of her estate paid the taxes on all of this property in 1935. The final settlement in her estate was filed and approved by the court at the February, 1937, term of the Probate Court. The City, under the terms of the will, became the owner of the real estate devised to it and took possession of the property in 1936, getting the rents from the same and managing the property for the interests of the City.

"The question now is whether or not the property, because it belonged to the City of Liberal, Missouri, was taxable for the years 1936, 1937, and 1938, or whether or not it is exempt under the provisions of Article 10 of the Constitution and the statutory provisions for the exemption of municipal properties.

"It is my opinion that this property is exempt, however, I first want to obtain the opinion of your office for the benefit of the county court before any action is taken by that body to abate the taxes which were assessed against this property in the name of Lillian M. Belk-Sibley, the assessor never having changed the property to the name of the present owner, the City of Liberal, Missouri. I yesterday informed the county court to await a reply to my request for the opinion of your office before taking any steps in this matter."

You state that the testatrix left considerable real estate to the city of Liberal; that she died in August, 1935, and her will was immediately probated;

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that the executors paid the taxes on such property in the year 1935, and the question is whether the city owes the taxes for the years 1936, 1937, and 1938.

Our courts have held that the title to land coming through a will conveys such title to the legatee after the will is probated as of the death of the testator. After the will is probated the conveyance relates back and takes effect as of the time of the death.

The Supreme Court of Missouri, in the case of Jones v. Nichols, 216 S. W. 962, l.c. 965 said:

"It is true, as asserted by respondent's learned counsel, that title to land does not pass by will until the will is probated. Smuffer v. Howerton, 124 Mo. 637, 28 S. W. 166. But it is equally true that title does pass upon the probating of the will, and relates back and takes effect as of the time of the testator's death. Barnard v. Bateman, 76 Mo. loc. cit. 415; Wilson v. Wilson, 54 Mo. 213."

In the case of Henderson v. Calhoun, 183 S. W. 584, l.c. 586, the Supreme Court of Missouri said:

"The will of William Calhoun, taken as a whole, indicates upon its face an intention upon the part of said testator to dispose of all his property by the terms and provisions of said will. In the absence of any expressed intention to the contrary, it will be presumed that the testator intended that the provisions of paragraph 8 of the will aforesaid should become effective at his death. We therefore hold that Mrs. Henderson, upon the death of said uncle, William Calhoun, became the absolute owner of all the property she thereafter received from his estate.

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Underhill on the Law of Wills, secs. 553 and 861; 2 Jarman on Wills (6th Ed.) p. 1357; 2 Washburn on Real Property (5th Ed.) sec. 1544; Eckle v. Ryland, 256 Mo. loc. cit. 449, 165 S. W. 1035; Heady v. Hollman, 251 Mo. loc. cit. 638, 158 S. W. 19; Tindall v. Tindall, 167 Mo. loc. cit. 225, 66 S. W. 1092; Chew v. Keller, 100 Mo. loc. cit. 368, 13 S. W. 395; Martin et al v. Lachasse et al., 47 Mo. loc. cit. 593; Collier's Will, 40 Mo. 287; Anderson v. Menefee (Tex. Civ. App.) 174 S. W. loc. cit. 908; Rhode Island H. Trust Co. v. Noyes, 26 R. I. loc. cit. 334, 58 Atl. 999.

"The rule upon this subject is ably stated in 2 Underhill on the Law of Wills, sec. 861, as follows:

'Under the rule elsewhere explained by which a modern will speaks as of the date of the death of the testator, every gift to a person who is alive at that date vests at once, in the absence of an expression of an intention that the vesting shall be postponed. It will be presumed, when the testator does not expressly or by implication indicate that the vesting of the title to his bounty is to be postponed, that he means it to vest at once upon his death. His silence on this point will raise a conclusive presumption that the interest in the gift is to vest as soon as the instrument by which it is given shall take effect, which, under the general rule, is at his death. '

Since that is nothing in your letter to indicate that the testatrix did not expressly, or by implication, indicate that the vesting of the title to the properties in question was to be postponed we presume that there was no such indication in the will, and, consequently the title to the properties vested in the city of Liberal, in the month of August,

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1935, when the testatrix died. In this connection we also call your attention to Sec. 9746 R. S. Mo. 1929, which provides that:

"Every person owning or holding property on the first day of June, including all such property purchased on that day, shall be liable for taxes thereon for the ensuing year."

The constitution and laws of this state provide that municipal corporations shall be exempt from taxation. Section 6, Article 10, Constitution of Missouri, 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."

Section 9743 R. S. Mo. 1929, reads in part as follows:

"The following subjects are exempt from taxation: * * * * * ; 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. * * * * * "

As to the property left to the City of Liberal to be sold by the city for the purpose of paving its main street we are of the opinion that it is tax exempt. The city received the title and also the beneficial interest of the same.

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In the case of St. Louis v. Wenneker, 145 Mo. 230, the city of St. Louis, as trustee, under a will, held title to real estate "in trust to furnish relief to all poor emigrants on their bona fide way to settle in the west". The court held this property was taxable because the city was not the beneficial owner.

The court said further:

"The reason for exempting from taxation property of the State and its municipalities is plain. Judge COOLEY in his work on Taxation (2 Ed.), p. 172, expresses it thus: 'All such property is taxable if the State shall see fit to tax it; but to levy a tax upon it would render necessary new taxes to meet the demand of this tax, and thus the public would be taxing itself in order to raise money to pay over to itself.' This reason does not exist for excluding from the tax books the Mullanphy real estate. The city, as trustee, can only use the property for the class and in the manner designated in the will. It can not be applied by said city to its own benefit, or for municipal purposes. * * * *

"We think that the property of a county or city exempted from taxation by the constitutional provisions hereinbefore 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." (Underlining ours).

In this case, however, the city is in fact the beneficial owner and the property and proceeds held by it "for its own use" and not merely held in trust for a beneficial owner not exempted from taxation. The

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real estate, or the proceeds from the sale of the same, is to be used and applied by said city to its own benefit and for municipal purposes. Therefore, this particular property must be exempted from taxation.

As to the property left to the city for the purpose of sale to create a trust fund for cemetery maintenance a different rule applies. Section 6, Article 10 of the Missouri Constitution exempts from taxation only such real estate as is actually used for cemetery purposes and as a burial ground, and does not exempt other lands owned by such association or any of its personal property.

In the case of State ex rel Mt. Mora Cemetery Association v. Casey, 210 Mo. 235, the court said:

"It must be remembered that the assessment of the taxes complained of here is not against the cemetery grounds or improvements, but against the personal property of the association, amounting in value to at least \$120,000, as found by the assessor of the city of St. Joseph, which has been invested and used by the association as its capital, and not for cemetery purposes.

"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

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plain meaning of these limits. (State v. Wilson, 52 Md. 638) * * * * *

"It is in accordance with the common wish of mankind that the places where the dead are buried should be protected and preserved against the interference of possible sales for unpaid taxes, or under execution for debts, and be kept free from all molestation or desecration. These legislative exemptions of cemetery property are the expression of that wish. But it is not perceived how that wish is made effectual by exemption from taxation property not used for burial places that has no associations connected with it, and may be disposed of by the association at any time, to any person for any purpose. *

" * * * * *
Nor do we think that section 6 of article 10 of the Constitution, supra, can be construed as indicating an intention on the part of the framers of that instrument to exempt from taxation the personal property of cemeteries, whether owned by a corporation or otherwise. In that section the words, 'the property, real and personal, of the State, counties and other municipal corporations,' are separate from and have no connection with the words 'and cemeteries' as such, but the section makes no reference to any kind of property in that connection, and section 7 of said article expressly provides that 'all laws exempting property from taxation other than the property above enumerated shall be void.' (Underlining ours).

CONCLUSION

It follows therefore that the real estate left

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to the city to be sold and the proceeds thereof used for purely municipal purposes in building a paved street for the city is exempt from taxation by section 6, article 10 of the Constitution of Missouri and also section 9743 R. S. Mo. 1929. If the property is left to the city for municipal purposes and the municipality is in fact the real beneficiary of the devise, it makes no difference whether such property is real or personal since both are exempt from taxation when owned by a municipal corporation for its own benefit. Since it appears that the title to this property vested in the city in the month of August, 1935, it would follow that the county court should levy no taxes against the same for the years 1936, 1937 and 1938.

However, only the grounds actually used as a cemetery and burial grounds are exempted from taxation under the Constitution of Missouri. Other real estate owned and not used as a burial ground and all personal property are not so exempted. Therefore, under the authority of *St. Louis v. Wenneker*, 145 Mo. 230, supra, the city of Liberal apparently holds the legal title to such property as trustee and since the beneficiary and the purpose for which such property is to be used is not exempted from taxation all of such property should have been taxed and the tax should have been paid on the same since the time the legal title so vested in the city of Liberal as trustee.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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JFA:RW