

TAXATION: Property of handwriting school not exempt from taxation under Art. X, Section 6 of the Constitution of Missouri.

January 12, 1940

Hon. L. Cunningham, Jr.
Prosecuting Attorney
Camden County
Camdenton, Missouri



Dear Sir:

We are in receipt of your request for an opinion from this Department, under date of January 11th, which reads as follows:

"We have in this county one Dr. Bunker who operates a business known as the American Institution of Graphology which carries on a business of analysing a handwriting for fees and also gives a course, I understand, in the art of handwriting. They own real estate and personal property in this county of more or less value and when the Assessor called upon them to assess their property Dr. Bunker informed him that they were an educational institution and that therefore their property was not assessable or taxable. Personally, I feel that the business is purely a racket, however, I doubt there being any way to prosecute them and that they are guilty of any violation of the law, however, I do not feel that they should escape taxes upon the subterfuge of their being an educational institution and I would appre-

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ciate an opinion from your office as to the matter in order that they may be placed upon the Assessor's tax books if they be taxable."

In Article X, Section 6 of the Constitution of Missouri certain exemptions from taxation are created. We set forth that constitutional provision:

"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 exclusively for agricultural or horticultural societies; Provided, that such exemptions shall be only by general law."

Also, in Article X of the Constitution of Missouri, we find Section 7 declaring other exemptions void. That section reads thus:

"All laws exempting property from taxation, other than the property above enumerated, shall be void."

61 C. J. pages 392-393, sets forth the following rule of construction to be applied to constitutional grants of exemption from taxation:

"Unlike the rule of liberal construction which has been generally adopted with reference to exemptions from levy and sale for the payment of debts, an alleged constitutional or statutory grant of exemption from taxation will be strictly construed, * * * "

Cited by Corpus Juris in support of the above rule, are the cases of State ex. rel. St. Louis Young Men's Christian Ass'n. v. Gehner, 11 S. W. (2d) 30, 320 Mo. 1172; St. Louis Lodge No. 9 B. P. O. E. v. Koeln, 171 S. W. 329, 262 Mo. 444, L. R. A. 1915C 694, Ann. Cas. 1916E 784; State ex rel. Mount Mora Cemetery Ass'n. v. Casey, 109 S. W. 1, 210 Mo. 235.

In State ex rel. St. Louis Young Men's Christian Ass'n. v. Gehner, 11 S. W. (2d), 30, the Court said, at page 37:

"It will therefore be seen that the test for tax exemption is not the number of good purposes to which a building may be put, nor the amount of good derived by the general public in the operation of such purposes, but whether the building is used exclusively for religious, educational, or charitable purposes. If it is used for one or more commercial purposes, it is not exclusively used for the exempted purposes, but is subject to taxation."

From the facts set forth in your request, as we understand them, this American Institution of Graphology carries on a business of analysing handwriting for fees in addition to teaching a course in handwriting.

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That being true, and applying the rule of strict construction, it cannot be said that the real property is used "exclusively for schools," within the meaning of Article X, Section 6, of the Constitution of Missouri. It is, therefore, not exempt by reason of that provision.

We are enclosing an opinion rendered by this office to Hon. Lamkin James, Prosecuting Attorney of Saline County, Marshall, Missouri, under date of May 6, 1938, which will answer the question of exemption of the personal property involved in your case.

CONCLUSION

It is the opinion of this Department that both the real and personal property of the Graphology School described in your request is subject to taxation, and is not exempt by reason of the provision of Article X, Section 6 of the Constitution of Missouri.

Respectfully submitted,

APPROVED:

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RPCW:RV

Enc.