

TAXATION:
MUNICIPALITIES:
CITY HOSPITAL PROPERTY:
EXEMPTION:

Property donated to or owned by city of
the third class for a city hospital is
exempt from taxation.

April 25, 1940

5-1



Mr. H. Tiffin Teters
City Attorney
Bank of Carthage Building
Carthage, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you request an opinion from this department on the question of whether or not the McCune-Brooks Hospital is liable for taxes on the properties of that institution.

In your request and statement of facts you set out the contents of an opinion written by this department on October 10, 1938, to Mr. Coyne, Prosecuting Attorney of Jasper County, Missouri, and written by Mr. Wm. Orr Sawyers, Assistant Attorney General. That opinion held that the properties which were held by the City of Carthage for the use and benefit of the McCune-Brooks Hospital were liable for taxes. This was based on the ruling announced in *St. Louis v. Wenneker*, 145 Mo. 230. The opinion in the *Wenneker* case was arrived at on the theory that the city was merely a trustee and was not the beneficial owner of the properties over which it was trustee. The opinion also held that the title to the property in issue is no legal reason to claim that this city hospital property be exempt from taxation as city property is exempt because the title is not held by the City of Carthage for the use of the City of Carthage.

In your request you set out a further statement which would indicate that the McCune-Brooks Hospital does belong to the City of Carthage, and since the writer of the foregoing opinion was not familiar with that fact, you request this opinion. In your request you set out the facts pertaining to the ownership of the hospital as follows:

"The McCune-Brooks Hospital is owned and operated by the City of Carthage, all moneys and all revenue passing through the offices of the Treasurer and City Clerk. In other words, McCune-Brooks Hospital is merely a department or board set up under the statutes relating to cities of the third class for the organization of hospitals.

"In giving a brief history of the organization of the hospital, the Carthage Hospital Association was incorporated by a pro forma decree of the Circuit Court in Jasper County at the March term, 1893, on April 28, 1893. This corporation operated a hospital for some years as a private corporation. At the June term, 1928, the Circuit Court of Jasper County, Missouri, at Carthage, dissolved the Carthage Hospital Association. This corporation turned all of its property and all of its assets over to the City of Carthage.

"By Ordinance No. 1477 of the City of Carthage, Jasper County, Missouri, passed and approved on the 28th day of May, 1928, the McCune-Brooks Hospital was organized as a municipal hospital governed by a board of six trustees appointed by the Mayor, said trustees serving without any compensation. It provides for the collection of special taxes for the support and maintenance of the hospital.

"Bonds totaling \$75,000.00 were approved and issued under a bond election held in the City of Carthage on April 3, 1928, and a new hospital building was erected. These bonds are now being retired by the City of Carthage.

"In regard to the specific question in this case, different donors have left to the City of Carthage property for the support and maintenance of the hospital. Income from this property goes to pay the hospital expenses of pauper patients, particularly those within the City of Carthage and those which the county refuses to pay or make any allowance for and for patients from outside the city but who live in Jasper County and who are really pauper patients but who are not attended by the county physician. Until this letter was written in 1938, taxes were not collected on this property or were not even assessed.

"Quoting from the above opinion which states, '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 feel that we come within this classification as the City of Carthage holds title to the property for a branch or a part of the municipal corporation. McCune-Brooks Hospital and the City of Carthage are one and the same as the hospital is under the complete control of the Mayor and City Council of the City of Carthage."

In the former opinion this department stated, "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." Therefore, the conclusion on this opinion will depend upon whether or not the McCune-Brooks Hospital is city-owned by the City of Carthage.

As stated in your request, the City of Carthage is a city of the third class and its powers and duties, in reference to owning and operating hospitals, are set out in Article 4, chapter 38, R. S. Missouri 1929. Section 6719 of said Article and chapter authorizes such city " * * * to purchase, hold, lease, sell or otherwise dispose of any property, real or personal, it now owns or may hereafter acquire; may receive bequests, gifts and donations of all kinds of property; * * * * * " In the case of Kennedy v. City of Nevada, 281 S. W. at 56, it was held that a city of the third class may purchase real estate only for municipal purposes. However, this case does not hold that such a city may not receive bequests, gifts and donations which are not particularly needed for municipal purposes.

Section 6807 of said Article and chapter authorizes the council of such city to obtain lands necessary for hospital purposes. Section 6834 authorizes such city to provide for the purchase and maintenance of hospital buildings, etc., either by taxation or by the issuance of bonds. So it will be seen by the foregoing provisions of said Article and chapter that cities of the third class are permitted to establish, operate and maintain city hospitals and to receive bequests, gifts and donations of all kinds of property for that purpose. In connection with the power of a city of the third class to receive donations we find in the case of Kennedy v. City of Nevada, 281 S. W. 56, 59, such power of a city is stated as follows:

"We do not say that the Legislature has no power to authorize cities of the third class to acquire and hold property for other than strictly municipal purposes. It has been held that, even under the common law, land may be given or devised to the city, or the city may obtain title by adverse possession, and the city may lawfully acquire title thereto, although the land may not be wanted for municipal purposes; yet the city may acquire it for the reason that it may be applied by

sale or lease to the alleviation of municipal burdens (New Shoreham v. Ball, 14 R. I. 566), and there is no doubt but that section 8206, R. S. 1919, gives authority to cities of the third class to 'receive bequests, gifts, and donations of all kinds of property.'

Your letter indicates that certain parties have donated lands for the use and benefit of this hospital. The liability for the taxes on these lands which are not particularly used for the hospital grounds is the question which we understand is at issue. Your request does not state whether or not these lands were conveyed to the hospital before it was taken over by the city. However, we think that that would be immaterial if the city now owns the fee simple title to these lands for the use and benefit of the hospital.

Section 6 of Article X of the 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. Missouri 1929, provides 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, or ornament; * * * * *

Section 7 of Article X of the Constitution of

Missouri provides as follows:

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

It will be noted that the foregoing exemption provisions of the Constitution and of the statute are directed solely to "ownership" of the property. In this connection we find that the general rule is stated that where tax exemption provisions are directed solely to "ownership" of public property, the use to which such property is put becomes immaterial. This rule is announced in *Grand River Drainage District v. Reid*, 341 Mo. 1246, 111 S. W. (2d) 151. So following the foregoing rule, if the city owns this property, then regardless of the fact of whether or not it is used for hospital purposes it would be exempt from taxation.

We have in mind another rule which would be applicable in this case and that is, "When public property is involved, exemption is the rule and taxation the exception." This rule is announced, approved and followed in the *Drainage District* case, *supra*.

In 3 A. L. R. at 1440, the rule of unqualified exemption of publicly owned property is stated as follows:

"Property owned by the state or subordinate municipal bodies is expressly exempted from taxation by constitutional provision or statutory enactment in many jurisdictions, and in some of these jurisdictions it is held that, where the exemption is express and unqualified, no tax can be levied against it regardless of the use to which it is put."

We think the provisions of the Constitution of Missouri and the statute hereinabove cited make the foregoing rule applicable to Missouri.

April 25, 1940

In order for property of a municipality to be exempt from taxation it is not necessary that it be used for municipal purposes. Referring to the latter part of the constitutional provision and the statute hereinbefore referred to, it will be seen that in order for properties of religious or charitable organizations to be exempt they must be used exclusively for those purposes, but this rule does not apply to municipal properties. That being the case, if the City of Carthage owns these lands which are given for the use and benefit of the hospital and the hospital belongs to the City of Carthage, then regardless of what use the lands are put to they would be exempt from taxation.

We further call your attention to the statement made in 101 A. L. R., page 790, in which the rule was announced as follows:

"The fact that land of a containing basin to store surplus water in flood times is cultivated when not overflowed, giving some revenue to the drainage district, does not make the land subject to taxation. State ex rel. Kinder v. Little River Drainage Dist. (1921) 291 Mo. 267, 236 S. W. 848."

In connection with this request, I am enclosing a copy of a memorandum written by Mr. O'Keefe, Assistant Attorney General, on the question of taxation by the City of St. Louis of property held by the Babler Trust Fund. The facts and circumstances in connection with this trust fund are somewhat analogous to your hospital case and I think will support our views in this opinion.

We do not have before us the conveyances whereby these properties were conveyed to the hospital, but if the City of Carthage is now the owner of the hospital and all of its properties, then our conclusions are all of the properties are exempt from taxes.

Mr. H. Tiffin Teters

-8-

April 25, 1940

CONCLUSION.

From the foregoing it is the opinion of this department that the lands and other property which are held by the City of Carthage for the use and benefit of McCune-Brooks Hospital which belongs to the City of Carthage are exempt from taxation under the foregoing provisions of the Constitution and section of the statute.

Respectfully submitted

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Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

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