

TAXATION: Property rented to and used by State
DORMITORY AT STATE Teachers College at Warrensburg, Missouri,
TEACHERS COLLEGE: exempt from taxation.

August 6, 1942

Mr. R. W. Starling
Member of the Board of Regents
of the Central Missouri State
Teachers College
Eldon, Missouri



Dear Sir:

This is in reply to yours of recent date wherein you request an opinion from this department on the following statement of facts:

"At the last meeting of the Board of Regents of the Central Missouri State Teachers College the question was presented as to whether or not the girls dormitory, known as the Laura J. Yeater Hall, is taxable.

"The facts regarding the title and the beneficial interest in the real estate are as follows:

"In 1926 a tract of land known as the 'West Campus' in the City of Warrensburg was acquired and the title taken in the name of 'The Board of Regents of the Central Missouri State Teachers College. Soon thereafter a very definite need developed for dormitory facilities for girl students of the college but no appropriation was forthcoming from the legislature. In order to meet that need the alumni, former students, teachers, students and friends of the college associated themselves together in a voluntary association,

under the provisions of Article Ten of Chapter Thirtytwo of the Revised Statutes of the State of Missouri for 1929, taking the name of the 'College Dormitory and Development Association of Warrensburg, Missouri,' the articles of association being dated July 22nd.1940, a copy of said articles of association being attached hereto and made a part hereof.

"On September 3rd. 1940, without any express authority from the legislature, the Board of Regents conveyed a part of said 'West Campus' described as:

The South 263 feet of the North Half of the Northeast Quarter of the Southwest Quarter of the Northwest Quarter of Section 25, Township 46, Range 26, Johnson County, Mo., except 10 feet off the South end thereof,

to the said College Dormitory and Development Association of Warrensburg, Missouri, and on the same day entered into a lease and contract whereby the said association agreed to build the dormitory and did lease the building and grounds to the Board of Regents and agreed to re-convey the real estate to the Board of Regents when the mortgage loan on the property was retired a copy of which lease contract is attached hereto and made a part hereof.

"The dormitory was constructed and has been used exclusively to house and keep students of the college, and the Board of Regents, out of the earnings of the dormitory, has paid all of the rental installments provided for in the rental contract.

"The College Dormitory and Development Association has no assets other than this

Laura J. Yeater Hall property and has no income except the rental paid by the college, and, also, the lease contract above mentioned was by the said association assigned to the trustee in the mortgage indenture and the payments are made direct to the trustee for the payment of the mortgage indebtedness.

"We would like to have your opinion as to whether or not the real estate above described, including the dormitory building, is subject to taxation."

The real estate upon which the dormitory is now situated seems to have been acquired from the State Teachers College by authority of Section 10753, R. S. Mo. 1939, which authorizes the Board of Regents to convey real estate belonging to that institution.

On the question of the exemption of this property from taxation, Section 6 of Article X of the Constitution and Section 10937, R. S. Mo. 1939, are applicable.

Section 6 of Article X reads 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."

And Section 10937 in part reads as follows:

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

It will be noted from these sections that if the lands and buildings thereon are used exclusively for school purposes or for purposes purely charitable the same are exempted from taxation for state, county and local purposes. The principle of exemption of properties used for school purposes was discussed by the court in *State ex rel. Hammer v. Macgurn*, 187 Mo. 238, 242, wherein the court said:

"The ownership or title to the property is not the determining factor. For if the property is owned by a religious, charitable or school organization and is leased or rented for use for any other purpose than such as the Constitution contemplates, the land is not exempt. So, if the private owner of the land allows his land to be used for such purposes and charges no rent and derives no personal benefit from the land, the land is exempt from taxation, because the land is then devoted exclusively to such a use. This was the case in *City of Louisville v. Werne*, 80 S. W. 224, relied on by the defendants. For in such cases the owner con-

tributes the use of his land to public or quasi-public use, or to such a use as the Constitution contemplates, and derives no gain or profit for himself, and, therefore, the State does not exact a tax from his land with one hand while accepting a contribution of the use of his land with the other hand.

"But on the contrary, when the owner leases his land to the public for a public use, or to a quasi-public body for a charitable or religious use, and applies the rents derived from the land to his own personal advantage, he contributes nothing to the public or charity, he loses nothing by the use, he is not a benefactor to any one, but he stands before the law in exactly the same light as any one else who leases his land for any other purpose, and uses the rents for his own advantage, and, therefore, he is not entitled to any special consideration at the hands of the law or the government, and his property is not exempt."

The Articles of Association of the College Dormitory and Development Association of Warrensburg, by Article Fifth thereof provide as follows:

"This association is formed for the purpose of acquiring real estate and the erection thereon of a dormitory or dormitories or other facilities which may be needed by Central Missouri State Teachers College or which may be usable and used in the promotion and development of said College and its facilities; and be used in connection with the scholastic training offered by said College to Students, and the

operation and/or rental of such facilities to students of the College or to the Board of Regents of said College for use by such students.

"And in order to carry out said purposes of this Association said Association shall take hold and convey real estate, shall receive gifts, and donations in order to assist in the carrying out of the purposes of this Association and to borrow, money, pledging the credit of this Association for such borrowing, and with authority to mortgage or otherwise encumber any real estate, buildings, or other property belonging to this Association and with authority to pledge the revenues and income of this Association to the payment of such indebtedness.

"It is further the purpose of this Corporation that no member of the Association and no Director or Officer of this Association shall receive any payment of income, or salary, or other compensation for any services rendered. It being the purpose of this corporation to be strictly a non-profit corporation, conducted and managed and operated for the general welfare and the promotion of the best interests of the College; and that the officers and directors thereof shall serve without compensation.

"It is further the purpose of this corporation that as soon as this corporation shall receive, by way of gifts or donations or revenues and income from the operation or leasing of the facilities so built by it, a sufficient amount to pay all indebtedness, together with interest, contracted by it for the acquiring of a site and the erection of

such facilities thereon, the Board of Directors of said Association shall cause such site and the facilities erected thereon to be conveyed to the Board of Regents of the Central Missouri State Teachers College so that said facilities shall become the absolute property of said Board of Regents."

It would appear from this provision of the Articles of Association that the sole purpose of the organization is to provide a dormitory for the State Teachers College at Warrensburg. The contract and lease which accompanied your request is in furtherance of the purpose of the Articles of Association. From an examination of these it would seem that the State School is the beneficial owner of this property because, under the plan, it receives the ultimate benefits of the rents. Under the plan the State School is to pay to the Dormitory Association \$12800 per annum until the entire indebtedness in the amount of \$130,000.00 is paid, at which time the Dormitory Association conveys the building and real estate upon which it is located to the State School.

On the question of the building being used for a dormitory for the school and, therefore, being exempt from taxation, we find that the court, in the case of State ex rel. Johnston, 214 Mo. 656, held that the fact that the school operates a dormitory for students in connection with the school does not operate to deprive such school from the constitutional tax exemption.

Under the principle that if the school is the "beneficial owner" of the property then it is exempt, we find that the court, in the case of St. Louis v. Wenneker, 145 Mo. 230, l. c. 238, made the following statement:

"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. * * "

In that case the city was holding the property as a trustee and the court there held that such property was not exempt on that account. The Articles of Agreement reveal that the property here held is for the benefit of the State School. The question as to the exemption of real property held in trust for the benefit of the state or one of its agencies is exhaustively discussed in the case of Security Savings and Trust Company v. Lane County, 53 Pac. 2nd. 33, decided by the Supreme Court of Oregon in 1935. The court devotes ten pages of the Reporter to a review of the cases on the subject and from them lays down the following rules:

"Real property, the title to which is vested in the state, whether in its name or in the name of a state agency, is exempt from taxation. It is also exempt if the state possesses the sole beneficial interest; the title being vested in a trustee."

In conclusion, the court reiterated:

"Applying the principles of law expressed in the above authorities, it is our belief that the exemption claimed in this suit cannot be granted under our statute, unless (1) the fee is vested in the state, or (2) the state's beneficial interest is exclusive of all equities of nonexempt persons. It is clear that these conditions are not present. Therefore, the property is subject to taxation."

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In the case of Board of Trustees of Illinois Industrial University v. Board of Supervisors of Champaign County, 76 Ill. 184, it was held that where the University's beneficial interest was exclusive, the property was exempt from taxation, even though the title was vested in a trustee.

From the provisions of the Articles of the Dormitory Association, we think that the Association acts in the nature of a trustee holding this property for the use and benefit of the State School. That being the case, the property would be exempt from taxation under two theories: First, that it is used exclusively for State purposes. Second, that the State School is the beneficial owner of the property.

CONCLUSION

From the foregoing, it is the opinion of this department that the real estate and buildings thereon, including the dormitory building at the State Teachers College at Warrensburg, Missouri, are exempt from taxation.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney-General

APPROVED:

HARRY H. KAY
(Acting) Attorney-General

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