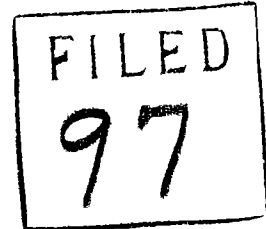


INHERITANCE TAX: Exemption from Missouri Inheritance Tax of bequest to be used for establishing the "James L. and Nellie M. Westlake Scholarship Foundation."

March 28, 1946



Honorable Robert W. Winn
State Treasurer
Jefferson City, Missouri

Attention: Mr. C. L. Gillilan, Supervisor
Inheritance Tax Department

Dear Sir:

Reference is made to your request of recent date for an official opinion of this office, reading as follows:

"I am enclosing herewith copy of the will of the above named decedent, together with letter from F. Leland Carpenter, Clerk of the St. Louis City Probate Court, which accompanied the Inheritance Tax Appraiser's Report.

"You will note that under the provisions of items six and seven of the decedent's will, there is created a trust to be known as 'the James L. and Nellie M. Westlake Scholarship Foundation'. The net income from this trust is to be used for scholarships for the higher education for residents of Missouri, but may be expended in any educational institution in the United States.

"The Statute (576) exempts from Inheritance Tax transfers of this character to be used in this State.

"We will appreciate being advised as to whether or not, in your opinion, this exemption applies in this particular case. * * *"

The pertinent portions of the will of James L. Westlake, referred to in your letter, and under which the bequest for the creation of the "James L. and Nellie M. Westlake Scholarship Foundation" is made, read as follows:

"ITEM SEVEN: Upon the death of the last survivor of the beneficiaries named in Clause (4) (a), (b), (c) and (d), inclusive, of Item Six, the entire trust estate then in the hands of the Mercantile-Commerce Bank and Trust Company, including all Accumulated Income, shall thenceforth be held and administered by such Trustee perpetually for the charitable trusts, uses and purposes set out below:

"Said Trustee shall hold the principal of said trust estate in perpetuity as an Endowment Fund to be known as the 'James L. and Nellie M. Westlake Scholarship Foundation'. * * * *

"The net income from said trust estate, after provision for the reserve and the reasonable and necessary expenses as hereafter set out, shall be used for scholarships for the higher education of young men and young women resident in the State of Missouri who would otherwise be unable to obtain the benefit of such education in colleges, universities and professional schools located in the United States and approved by the Educational Committee hereafter constituted.

"Within one (1) year after the charitable trust estate hereby created shall have come into existence a permanent committee of three members shall be constituted called the 'Educational Committee of the James L. and Nellie M. Westlake Scholarship Foundation'. Within said period the President or other chief officer of the Trustee shall appoint as members of said Educational Committee, with the approval of Trustee's Board of Directors, three persons, one for a term of one year, one for a term of two years and the third for a term of three years, who shall be

persons who are in his opinion and in the opinion of said Board of Directors well qualified to perform the duties required of them hereunder and not members of the faculty or governing board of a college or university. In general, they shall be persons interested in the education of young people and with sufficient knowledge and experience to make appropriate selections of persons who are to be the beneficiaries of the Foundation hereby created and to approve the colleges, universities and professional schools at which such young people are to be educated. * * * * *

"At the end of the first calendar year within which the charitable trust hereby created shall have come into existence, or as soon thereafter as is practicable, and at the end of each subsequent calendar year, the Trustee shall advise the Educational Committee of the amount of income available for scholarships. Thereafter, the Educational Committee shall proceed to select young men and young women resident in the State of Missouri who are, in their opinion, by reason of their natural aptitude and intellectual ability, worthy of receiving scholarships and who except for the aid provided by such scholarships would be unable to obtain a higher education.
* * * * *

"The Educational Committee shall also set out in said certificate the amount of money which is to be paid by the Trustee to each of those persons selected. The amount in each case shall be a sum sufficient to pay the tuition and the necessary maintenance and support of each beneficiary at the institution so selected and approved. The amount paid a beneficiary shall not be substantially in excess of the minimum amount required for the tuition, maintenance and support of a student at the particular institution selected, and the total of the amounts set out by the Educational Committee to be paid to all of those selected shall not exceed the amount which the Trustee has certified as being available for the purpose. * * * *

"The Trustee upon being advised of those selected for scholarships shall notify the persons so selected as beneficiaries of their selection and shall make available to each from time to time the amount of money certified by the Educational Committee as being the amount which the beneficiary is to receive, such money to be used by the beneficiary for tuition and his reasonable and necessary maintenance and support. The Trustee shall be absolved from any duty or liability in connection with the Committee's determination other than the duty to make the payments designated by the Committee. The Trustee shall not be liable for any diversion of the payments by any beneficiary. The money paid to the beneficiaries shall not be construed as loaned to them and they shall be under no legal obligation to repay the same. * * * * *"

Two statutes relating to exemptions from Missouri Inheritance Tax appear in the Revised Statutes of Missouri, 1939, namely, Sections 576 and 602. Section 576 reads, in part, as follows:

"The following shall be exempt from taxes provided for in this article: All transfers of property or any beneficial interest therein to be used, and actually used solely for county, city, town or municipal purposes, or for religious, charitable, or educational purposes in this state whether such transfer be made directly or indirectly and said property shall be exempt from the tax where the same descends from a trustee or trustees to other trustee or trustees who hold property for the uses of the above named institutions. * * * * *"

Section 602 reads as follows:

"When any property, benefit or income shall pass to or for the use of any hospital, religious, educational, Bible, missionary, scientific, benevolent or charitable purpose in this state, or to any trustee, association, or corporation, bishop, minister of any

church, or religious denomination in this state; to be held and used and actually held and used exclusively for religious, educational, or charitable uses and purposes, whether such transfer be made directly or indirectly, the same shall not be subject to any tax, but this provision shall not apply to any corporation which has a right to make dividends or distribute profits or assets among its members."

We are cognizant of the decisions of the Missouri Supreme Court holding that, under the provisions of these two sections, devises and bequests to educational institutions located outside the boundaries of the State of Missouri are not exempted.

In the case of Hall's Estate, 85 S. W. (2d) 621, the Supreme Court had for consideration the claim of exemption advanced on behalf of DePauw University with respect to a devise of real property, such University being located in Greencastle, Indiana. Such exemption was claimed under the provisions of Sections 575 and 602, R. S. Mo. 1929, now appearing as Sections 576 and 602, R. S. Mo. 1939. In disallowing the claim of exemption advanced under the first statute mentioned, the court adopted the opinion delivered in the Estate of Quirk, 257 Mo. 422, 165 S. W. 1062, saying:

"! * * * The general doctrine seems to be that prima facie the law should be held to have reference to persons and things within the territorial jurisdiction of the body enacting it, unless it clearly appears that another and different purpose should be gathered from the act itself. Presumptively the lawmaking power is acting in the interest of persons and things within the state. Presumptively the lawmakers in this case were looking after the interests of Missouri, and not legislating for charities in other states, and especially is this so when they were unloosing our own purse strings by this exemption clause. It means, if given the construction urged by the respondent, that a Missouri lawmaking body was releasing its hold upon a source of revenue for charities outside of the state. To give it that construction would, in effect, be to say that the lawmaking body was taking Missouri money to support foreign charities."

In further disallowing the claim of exemption under Section 602, the court said:

"We now consider section 602 (Mo. St. Ann. sec. 602, p. 370), as follows: 'When any property, benefit or income shall pass to or for the use of any hospital, religious, educational, Bible, missionary, scientific, benevolent or charitable purpose in this state, or to any trustee, association, or corporation, bishop, minister of any church, or religious denomination in this state, to be held and used and actually held and used exclusively for religious, educational, or charitable uses and purposes, whether such transfer be made directly or indirectly, the same shall not be subject to any tax, but this provision shall not apply to any corporation which has a right to make dividends or distribute profits or assets among its members.'

"The pertinent parts of the section may be separated as follows:

"'When any property * * * shall pass to or for the use of any * * * educational * * * purpose in this state, * * *'

"'Or to any trustee * * * in this state, to be * * * actually held and used exclusively for * * * educational * * * purposes * * * the same shall not be subject to any tax.'

* * * * *

"The section under consideration is ambiguous. It is not a question of construing the section. It is a question of whether or not the transfer is clearly exempted by the section. We find no word or words therein clearly providing for an exemption of the transfer in question."

However, we believe that the bequest now under consideration is not one within the rules announced in the Hall case, supra. We have reached that conclusion by giving effect to the disposition to be made of the money to be expended by the Trustee upon the recommendation of the "educational Committee

of the James L. and Nellie M. Westlake Scholarship Foundation." Reference to the underscored portions of the will of James L. Westlake, set out supra, clearly discloses that all payments thereunder from the Scholarship Foundation Fund are to be made to persons resident of the State of Missouri to be used solely for educational purposes. The payments are not to be made to the educational institutions selected by the various recipients, which may or may not be located within the boundaries of the State of Missouri, but are to be made directly to the persons selected and are to be expended by them. That such was the intent of the testator is clearly indicated by the underscored provision relieving the Trustee from liability for any diversion of the funds after payment to such persons. Clearly, the entire scheme contemplates the entire matter be completed, if not necessarily within the State of Missouri, at least with persons who are residents of the state. We think that these provisions serve to fulfill the requirement that the exemptions provided in the statutes mentioned are for the protection of the State of Missouri and its residents, and are not to be used to allow the transfer of property to educational institutions in other states from which the citizens of Missouri derive no benefit.

We have searched for cases arising in other jurisdictions construing similar provisions incorporated in wills or trust instruments. We believe that the construction placed upon the trust instrument executed by Edward Bok declares with perhaps the greater conciseness the rules applicable to a consideration of the provisions of the James L. Westlake will. Under the terms of the Edward Bok trust agreement, provision was made for the delivery to the trustees of a large sum of money, to be expended by the trustees for certain purposes enumerated therein. Primarily, the trustees were to determine, at the end of each calendar year, what resident of Philadelphia had performed an act or rendered a service to the advantage of the city or its inhabitants as to be eminently worthy of public recognition and reward. Upon such determination having been made, the trustees were authorized to pay to such outstanding citizen the sum of \$10,000, together with the delivery of a suitable certificate or plaque embodying the facts surrounding such determination. In the alternative, and upon a determination having been made by the trustees that no citizen was worthy during the current calendar year of such public recognition and reward, the trustees were authorized to devote the current year's income from the trust fund for free scholarships for boys and girls resident in Philadelphia, the provisions with respect to the free scholarships being quite similar to those found in the James L. Westlake will.

The contention was made that the transaction was not of a charitable nature or for educational purposes. In discussing the contention so advanced, the Circuit Court of Appeals, 3rd Circuit, in Bok et al. v. McCaughn, 42 Fed. (2d) 616, said:

"It remains then to inquire whether the foundation is 'organized and operated exclusively for * * * charitable or educational * * * purposes, * * *' for, if so, undoubtedly the foundation meets the other test, viz., 'No part of the net earnings of which inures to the benefit of any private stockholder or individual.'

"Charity, derived from the Latin caritas, originally meant love. In the thirteenth chapter of first Corinthians the revised version uses the word 'love' in defining the third of the three cardinal virtues, which, in King James' version read 'Faith, Hope and Charity.' It was with similar emphasis on the motive which prompts action that Mr. Binney framed his approved definition of a charitable trust in his argument in the Girard will case: 'Whatever is given for the love of God, or the love of your neighbor, in the catholic and universal sense, given from these motives and to these ends, free from the stain or taint of every consideration that is personal, private, or selfish.' Vidal v. Girard's Executors, 2 How. 128, 11 L. Ed. 205 (1844) which is quoted by the Supreme Court in Ould v. Washington Hospital, 95 U. S. 311, 24 L. Ed. 450. Charity means such unselfish things as are wont to be done by those who are animated by the virtue of love. Thus the Supreme Court of the United States, following Chancellor Kent, Lord Lyndhurst, and Lord Camden, has defined a charitable trust as 'a gift to a general public use which extends to the poor as well as to the rich.' Perin v. Carey, 24 How. 506, 16 L. Ed. 701 (1860). So, also, Mr. Justice Gray speaking for the Supreme Court of Massachusetts in Jackson v. Phillips, 14 Allen 556 (1867) declared a charitable gift to be one 'for the benefit of an indefinite

number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.'

"It cannot be doubted that Mr. Bok's gift was a charitable gift as the word 'charitable' is used and understood by courts and lawmaking bodies. What he did was done for the love of his neighbors in the community which he had adopted as his home. Every activity recognized by the awards that have been made is an activity for the promotion of which a charitable trust might be created. A trust for popular education in music, or for making higher education accessible to the many, or for stimulating American patriotism by recalling the unselfish sacrifices of the fathers, or for the relief of human suffering, through new and improved surgical methods, or for the encouragement of craftsmanship, or for the beautification of a city, would be a charitable trust tested by any of the definitions which the authorities supply. And if a trust for the promotion of any one of these interests would be a charitable trust, it follows that a foundation to promote all of them is a trust that partakes of the nature of each. The making of an award to the citizen who renders conspicuous service in any field is one way (and an impressive one) to hold up that particular activity as an object of honorable effort and to encourage the many to follow in the train of the one thus conspicuously honored. Manifestly it was within the purpose of Congress, in granting this exemption, to encourage men and women to follow the examples of those whose well doing has made them the lights of the world in their several generations. In our judgment this court is giving effect to the intent of Congress when it holds, as we now do, that the disinterested gift of Mr. Bok for the good of his neighbors and for

the promotion of interests technically charitable and really educational is entitled as such to the exemption Congress meant to give." (Emphasis ours.)

CONCLUSION

In the premises, we are of the opinion that the bequest incorporated in the will of James L. Westlake to the trustees named therein for the purpose of establishing the "James L. and Nellie M. Westlake Scholarship Foundation" is a bequest for educational and charitable purposes, within the meaning of Sections 576 and 602, R. S. Mo. 1939, and that such bequest is exempt from Missouri Inheritance Tax.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General