

TAXATION: Real estate belonging to non-profit organizations
EXEMPTION: is not exempt from taxation.

*Copy to
J. Smith*

May 15, 1947

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Honorable Roy A. Jones
Prosecuting Attorney
Johnson County
Warrensburg, Missouri

Dear Sir:

This is in reply to your letter of recent date wherein you submit a request for an opinion on the following statement of facts:

"The question has arisen here, as to whether a certain tract of land with the building on it, should be taxed for general State, County and School Taxes; or, whether it may be exempt from the Taxation under the Constitution and the Act of the last General Assembly, as to what property shall be exempt from Taxation.

"The whole situation, is this:-

"A Committee from the Chamber of Commerce contacted the Town And Country Shoe Company, to try to induce them to open a Shoe Factory here in Warrensburg. This Shoe Company agreed to come to Warrensburg, with a Factory; provided a suitable building was provided for them, with a minimum area of floor space; and, provided, this building should be leased to them, rent free, for a period of Twenty (20) years.

"The securing of a site and the erection of such a building would require quite a considerable outlay of money. The Board of Directors of the Chamber of Commerce canvassed the situation among quite a number of business men and found most of them willing to contribute to such an enterprise; some of them being willing to contribute this money without any return to them

whatsoever, in any event. Others of them were willing to contribute, but felt, that if at the end of the Twenty (20) years, this building might be occupied by a tenant willing to pay a fair rental, which might to some extent work a return on their contribution, they wanted that done.

"In pursuance of this whole plan, a Corporation was formed, known as the Warrensburg Industrial Development Corporation, with an authorized capital stock of \$100,000, divided into 2,000 Shares, of the par value of \$50 each; then various citizens and business men were solicited for contribution to the Chamber of Commerce, which would be turned over to the Warrensburg Industrial Development Corporation, to be used in the securing of a site for erection of the proposed building, or for the purchase of Stock in the Corporation.

"A good many of the contributors contributed their money to the Chamber of Commerce, with the Chamber of Commerce turning it over to the Corporation. Others of them took stock and part of the stock so taken, has been turned over to the Chamber of Commerce; so, that a fair amount of the stock belongs to the Chamber of Commerce.

"Almost immediately after the granting of the Charter of incorporation, to the Warrensburg Industrial Development Corporation, that Corporation made a contract with the Warrensburg Chamber of Commerce, by which it agreed to secure the location and erect a necessary building thereon, and lease said property, when completed and ready for occupancy, to the Chamber of Commerce for a period of Twenty (20) years, for a rental of One Dollar (\$1) per year, only.

"The Chamber of Commerce is sub-letting under this Contract and lease agreement to the Town And Country Shoe Company, for

One Dollar (\$1) per year, for a period of Twenty (20) years; the Shoe Company paying utility bills, in addition to the One Dollar (\$1).

"It is the contention of the Warrensburg Industrial Development Corporation and the Chamber of Commerce, that for this Twenty (20) year period, at least, this is strictly a 'no-profit' Corporation, and a 'no-profit' transaction; and, that so long as said building is used and occupied under such a lease agreement, that same should be and is, exempt under the Constitution and under the Act of the Last Session of the Legislature.

"The County Authorities are in doubt, as to what should be done; though, I believe that they feel under all the circumstances above outlined, that the property should not be taxed; but, want to be sure, that the property is really tax exempt; otherwise, it will be retained on the Tax Roll, as it was in the hands of an individual and on the Tax Roll for Taxes due in the year 1946."

I note from your request that the Industrial Development Corporation of the Chamber of Commerce is under the impression that since this organization is a strictly non-profit corporation and the transaction described in your request is a non-profit transaction, that for that reason the real estate owned by this corporation should be exempted from taxes during the term of the contract with the manufacturer to whom the corporation proposes to lease the premises for a period of twenty years.

Section 6 of Article X of the Constitution of 1945 provides as follows:

"All property, real and personal, of the state, counties and other political subdivisions, and non-profit cemeteries, shall be exempt from taxation; and all property, real and personal, not held for private

or corporate profit and used exclusively for religious worship, for schools and colleges, for purposes purely charitable, or for agricultural and horticultural societies may be exempted from taxation by general law. All laws exempting from taxation property other than the property enumerated in this article, shall be void."

Section 5 of House Committee Substitute for House Bill No. 471, passed by the 63rd General Assembly, which is the enabling act to carry out the provisions of said Section 6 of the Constitution, provides as follows:

"The following subjects shall be exempt from taxation for state, county or local purposes: First, lands and other property belonging to this state; Second, lands and other property belonging to any city, county or other political subdivision in this state, including market houses, town halls and other public structures, with their furniture and equipments and on public squares and lots kept open for health, use or ornament; Third, lands or lots of ground granted by the United States or this state to any county, city or town, village or township, for the purpose of education, until disposed of to individuals by sale or lease; Fourth, non-profit cemeteries; Fifth, the real estate and tangible personal property which is used exclusively for agricultural or horticultural societies heretofore organized, or which may be hereafter organized in this state; Sixth, all property, real and personal actually and regularly used exclusively for religious worship, for schools and colleges, or for purposes purely charitable, and not held for private or corporate profit shall be exempted from taxation for state, city, county, school, and local purposes; provided, however, that the exemption herein granted shall not include real property not actually used or occupied for the purpose of the organization but held or used as investment

even though the income or rentals received therefrom be used wholly for religious, educational, or charitable purposes."

If the lands referred to in your request are exempt from taxation, it is by virtue of the provisions of subsection 6 of Section 5 of said H.C.S.H.B. No. 471, supra. From an examination of said subdivision 6 and from an examination of Section 6 of Article X of the Constitution, we do not find where an organization is exempted from taxation solely on account of it being a non-profit organization. This subdivision does authorize exemption from taxation for property used exclusively for religious worship, for schools and colleges, or for purposes purely charitable and not held for private or corporate profit. In the case of *State ex rel. v. Gehner*, 11 S.W. (2d) 30, the Missouri Supreme Court, in considering the exemption provisions of the Constitution of 1875, quoted the following rules which we think are applicable under the Constitution of 1945, at l.c. 34:

"As the burden of taxation ordinarily should fall upon all persons alike, when one claims an exemption therefrom he must be able to point to the law granting such immunity and it must be clear and unambiguous." *Kansas Exposition Driving Park v. Kansas City*, 174 Mo. loc. cit. 433, 74 S.W. 981.

"Such statute and constitutional provisions are construed with strictness and most strongly against those claiming the exemption." *Beach on Public Corp.*, par. 1443; *Dillon on Munic. Corp.* (3d Ed.) par. 776, and cases cited; *1 Burroughs on Taxation*, Section 70; *1 Desty on Taxation*, p. 108; *Cooley on Taxation*, pp. 204, 205.

"And very recently this court, by Walker, J., said: 'The policy of our law, constitutional and statutory, is that no property than that enumerated shall be exempt from taxation.' *State ex rel. Globe-Democrat Pub. Co. v. Gehner*, 316 Mo. 696, 294 S.W. loc. cit. 1018.

"A grant of exemption from taxation is never presumed; on the contrary, in all cases of doubt as to the legislative intention, or as to the inclusion of particular property within the terms of the statute, the presumption is in favor of the taxing power, and the burden is on the claimant to establish clearly his right to exemption.' * * * "

In the case of Memphis Chamber of Commerce v. City of Memphis, 232 S.W. 73, the question of whether or not the property of a Chamber of Commerce was exempt from taxation under a statute of that state was before the court. In that state, the Constitution authorized the General Assembly to exempt properties of non-profit corporations which were used for purposes purely religious, charitable, etc. The General Assembly of that state enacted enabling legislation to that provision of the Constitution and provided that (l.c. 74):

"All property belonging to any religious, charitable, scientific, or educational institutions, when used exclusively for the purpose for which the institution was created, or is unimproved and yields no income. All property belonging to such institution used in secular business and competing with a like business that pays taxes to the state shall be taxed on its whole or partial value in proportion as the same may be used in competition with secular business."

At l.c. 74, the court, in discussing the application of the exemption clause to the Chamber of Commerce, said:

"Now, can complainant be termed a corporation operated exclusively for religious, charitable, scientific or educational purposes?"

"We think not. It is true it is not a corporation for profit, but, as before stated, its primary object is to promote the business and commercial interests of the city of Memphis. This is expressly stated in its charter. We are of the opinion, therefore, that it cannot claim

the benefit of the exemption extended to religious, charitable, scientific, or educational institutions. The mere fact that it administers to charity, or may give instructions of an educational nature along certain lines, does not render it an educational or charitable institution in the sense of our Constitution and statute exempting the property of such institutions from taxation."

A similar question was before the Massachusetts Supreme Judicial Court in the case of Boston Chamber of Commerce v. Assessors of Boston, 54 N.E. (2d) 199, cited in 152 A.L.R. 174. In that case, the court held (l.c. 174):

"A chamber of commerce the dominant purpose of which is to promote business and trade and to foster good business practices and relations in the community, with a view to increased profits as well as general public benefit, is not a 'charitable' or 'benevolent' institution within the meaning of a tax exemption statute."

While it appears from your request that the Chamber of Commerce is claiming exemptions because the organization is a non-profit organization, still if it were contended that the purposes of this organization are charitable, under the two cases hereinabove cited, the exemption provisions of the Constitution and statutes would not permit the exemption of this property from taxation.

Applying the above principles, we do not think the property held by the Warrensburg Industrial Development Corporation for the purposes stated in your letter would be exempt from taxation under the statutory and constitutional provisions hereinbefore set out.

CONCLUSION

It is therefore the opinion of this department that real estate and tangible personal property held by a non-profit

Hon. Roy A. Jones

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corporation is not exempt from taxation merely on account of the fact that such corporation is a non-profit corporation.

Respectfully submitted,

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APPROVED:

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TWB:VLM