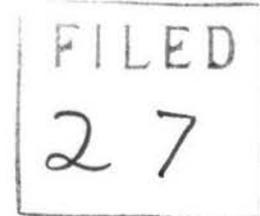


TAX EXEMPT REALTY Realty and personalty not strictly devoted to  
AND PERSONALTY: purely charitable purposes is not tax exempt.

November 30, 1949

Honorable Clarence Evans  
Chairman  
Missouri State Tax Commission  
Capitol Building  
Jefferson City, Missouri



Dear Sir:

This department is in receipt of your recent request for an official opinion, which request is stated by you in the following manner:

"We received an appeal in the regular manner from the above corporation claiming exemption on both tangible, personal property and real estate. The case was heard on October 18th at Poplar Bluff, Missouri, and we would like to have an opinion from your office.

"We are enclosing herewith copy of the Pro Forma Decree of the above corporation and we have on hand copies of their annual proceedings, which include the balance sheets for the years 1944, 1945, 1946, 1947 and 1948. We will be glad to loan these to your office upon request. We are also enclosing copy of their Petition for Review of Assessment.

"From the evidence given it is apparent that the General Association of General Baptists gave to the corporation in question the machinery with which to operate and \$16,000.00 toward the purchase price of the realty. The corporation in question borrowed from the bank \$10,000 to complete the purchase of the realty. Besides the gifts from the General Baptists, the corporation receives gifts throughout each year from others. They publish several Religious papers, one of which is for the Christian Church, and they state that this is published at cost. The balance of the

papers are furnished for the parent company, the main one of which is known as The Messenger. In addition to these papers they also sell other Religious books and Dictionaries at a profit. They do not publish these Dictionaries and other Religious publications, nor do they keep a supply on hand, but they do accept orders from subscribers and buy this additional merchandise as required. A profit is made on the merchandise ordered, but they contend they are not operating at any great amount of profit, and should their business at any time show a profit of consequence, this money would be turned to the General Association for Religious work.

"We have read with some interest the Evangeline Lutheran Synod case in S.W. 2nd. 196 at page 136. We believe this is a parallel case although the profits are not to be compared. We call your attention again to the fact that this covers both tangible personal and real property.

"Inasmuch as time is getting short on the payment of taxes for this year, we would appreciate an early opinion."

We have here a situation in which the Board of Publications of the General Association of General Baptists, a corporation, which will hereinafter be referred to as the "Board", seeks exemption from taxation of its real and personal property. That property consists of realty purchased several years ago for \$26,000.00, of printing presses and other tools and machines necessary in the printing process. There is no indication of the value of these presses, tools, and machines.

In regard to the above, we would first call your attention to the tax exemption Section of the 1945 Missouri Constitution, which is Section 6 of Article X. That section reads:

"Exemption from Taxation.--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."

This section of the Constitution was effectuated by the Laws of Missouri 1945, page 1799. (Now section 10942.4, Mo. R.S.A. 1939). That section reads:

"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."

In its "Petition for Review of Assessment," the Board states:

"That your petitioner claims that the assessment of its tangible personal property and real estate for purposes of state and county

taxation violates section 10942.4, R. S. Mo. 1939, amended by the Laws of 1945, in that the said tangible personal property and real property are used for a purpose purely charitable, and therefore, your petitioner prays that a hearing be had in connection with the erroneous assessment of said property, that the owner be notified, that said property be stricken from the tax rolls."

It will be observed that in the above the Board bases its claim to tax exemption solely on the ground that its publishing house is "used for a purpose purely charitable."

Both section 6, Article X of the Constitution, and the Laws of Mo. 1945, both quoted above, state that property, both real and personal, which is used for purposes purely charitable shall be tax exempt.

The question, therefore, which we have to decide is whether this publishing house is used for purposes purely charitable.

Some light is thrown upon this point by the "Articles of Agreement" of the Board. Article IV of this document states:

"This Association is formed for the purpose of the supervision and promotion of the publication and distribution of the General Baptist Messenger, a religious journal published weekly at Poplar Bluff, Missouri, and such other religious literature as shall from time to time be required, and the direction and operation of any future publishing enterprise undertaken by the General Baptist denomination, all of which shall be printed in the English language."

The above article contemplates three separate activities, the first of which is, "The publication and distribution of the General Baptist Messenger, a religious journal published weekly at Poplar Bluff, Missouri."

Subscriptions are sold to this journal and copies sent each week to the paid up subscribers. We assume also that advertising is sold at approximately the same rates charged by secular publications. We assume from your letter that the proceeds from subscriptions and advertising at least meet the cost of publication and distribution. Can it be said that this activity is purely charitable?

Article IV also says that this Board shall publish "such other religious literature as shall from time to time be required."

In your letter you state that these publications are issued by the Board at cost. Can this be said to be a purely charitable activity?

Finally, Article IV authorizes "the direction and operation of any future publishing enterprise undertaken by the General Baptist denomination."

The final clause gives the Board wide latitude indeed in its publishing activities, and it certainly could not be said that under it the Board could not at any future time engage in a profit making enterprise very far removed from "pure charity".

In your letter you state that, "In addition to these papers they (the Board) also sell other Religious books and Dictionaries at a profit." On this latter point, you state that the Board contends that: "They are not operating at any great amount of profit." By the admission of the Board, therefore, they do make some profit on this latter activity. Can it be said that this is the "purely charitable" activity which is contemplated by the Constitution and the Statute quoted above? It seems obvious to us that neither this, nor any of the three activities discussed above, is "purely charitable" within the meaning of the Constitution and the statute.

It is obvious that to support the above observation, we need an authoritative definition of the word "charity." Such a definition is supplied by the Missouri Supreme Court in the case of Salvation Army v. Hoehn, 188 S.W.(2d) 826. There, the Court said:

"Probably the most comprehensive and carefully drawn definition of a charity that has ever been formulated is that it is a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.  
\* \* \* A charity may restrict its admissions to a

class of humanity, and still be public; it may be for the blind, the mute, those suffering under special diseases, for the aged, for infants, for women, for men, for different callings or trades by which humanity earns its bread, and as long as the classification is determined by some distinction which involuntarily affects or may affect any of the whole people, although only a small number may be directly benefited, it is public.' See also, Robinson et al. v. Crutcher et al., 277 Mo. 1, loc. cit. 8, 209 S.W. 104; Catron et al. v. Scarritt Collegiate Institute et al., 264 Mo. 713, loc. cit. 725, 175 S.W. 571, 573. These cases dealt with charitable gifts, but charity is charity and the legal concept of charity expressed and reflected in these cases is, we think, applicable to the present facts. \* \* \*

In the same case the Court also said:

"An intention on the part of the legislature to grant an exemption from the taxing power of the state will never be implied from language which will admit of any other reasonable construction. Such an intention must be expressed in clear and unmistakable terms, or must appear by necessary implication from the language used, for it is a well settled principle that, when a special privilege or exemption is claimed under a statute, charter or act of incorporation, it is to be construed strictly against the property owner and in favor of the public. This principle applies with peculiar force to a claim of exemption from taxation.' The above from 2 Cooley on Taxation, 4th Ed., Sec. 672, p. 1403, was quoted with approval in the third YMCA case. See also Fitterer v. Crawford, 157 Mo. 51, loc. cit. 58, 57 S.W. 532, 50 L.R.A. 191."

It will be observed that the above definition says that for a thing to be a charity, it must be a "gift." There is no indication whatever that any activity of this Board supplies a "gift" to any one. The Board says of some of its activities that upon them it does not make a profit but operates at "cost." Upon other of their activities they admit that they do make a profit but that it is a small one. They further admit that the Board retains this profit because in your letter you state:

"A profit is made on the merchandise ordered, but they (the Board) contend they are not operating at any great amount of profit, and should their business at any time show a profit of consequence, this money would be turned to the General Association for Religious work."

This subject of property being exempted from taxation because it is being used for religious or charitable purposes has received thorough and exhaustive treatment by the Missouri Supreme Court in the case of Evangelical Lutheran Synod of Missouri, Ohio, and other states et al. v. Hoehn, 196 S.W.(2d) 134. The fact situations in the above case and in the instant case are very similar. In the case cited, the Court says:

"The plaintiffs-appellants are the Evangelical Lutheran Synod of Missouri, Ohio and Other States, and Concordia Publishing House. Both are Missouri corporations organized under Art. 10, Chap. 33, Secs. 5436-5465 covering benevolent, religious, educational and other like corporations. For convenience, we shall refer throughout this opinion to the first named corporation as the Synod, and to the second as the Publishing House. The defendants-respondents are the Assessor, the Comptroller and the Collector of Revenue of the City of St. Louis.

"The Publishing House is a subsidiary corporation of the Synod, the latter controlling, through the board of directors elected by it, all the activities of the former. It is conceded that in their activities the two corporations constitute a single unit. The Publishing House does a specialized printing and publishing business, and holds title to the real estate involved for the use and benefit of the Synod. \* \* \*"

\* \* \* \* \*

"All the buildings are used solely for the purposes of the two corporations. They contain various offices of the Synod, the Publishing House and church organizations; a book library and a sacred music library, used by the clergy, teachers and musicians; a large auditorium used by the Synod;

a large book displays room where books may be purchased at retail; a printing plant, and bindery; stock room; storage and warehouse rooms; engine, boiler and heating plant rooms. All the lots were purchased and the improvements thereon constructed solely out of the profits and surplus of the Publishing House.

"Part of the books sold by the Publishing House are printed and published by it, and part by others. Most of them are religious books. Some are secular, mainly English Classics and Webster's Dictionary, all these being approved by the Synod. It also prints religious periodicals and supplies material to the denominational churches and parochial schools. \* \* \*"

The general similarity between the cited case and the one under consideration is evident.

In holding that the realty of the Publishing House in the cited case was not tax exempt on the ground that it was used for religious or charitable purposes, the Court said in part:

"The prerequisites to tax exemption were: (1) the use of the land itself, not merely its usufruct, for those exclusive purposes; (2) the owner must be dedicated to those purposes. To that extent the ownership characterized the use. If the first were not true, a proper religious or charitable institution could have claimed tax exemption if, for instance, its real estate was merely rented out and the rentals devoted to its objectives--- which is not the law. And if the second were not true any business could have made its real estate tax exempt (within the Constitutional area, of course) by consecrating the returns therefrom to religious or charitable uses. Furthermore, the doctrine is practically universal that religious or charitable institutions cannot enter the field of business and operate for profit. Sec. 5444 covering benevolent corporations has provided ever since 1879 that no association formed 'for business purposes of any kind, or for pecuniary profit in any form' shall be incorporated thereunder.

"But there are, and always will be, borderline cases. The rule in this State is that the plotted

objective of the institution must be exclusively religious or purely charitable; and its activities must be such as integrate with its objective--that is, fit in without changing its character. Some states inquire merely into the dominant (apparently in the sense of predominant) objective and figure the percentage of different objectives or activities. But our most recent expression of the rule under the 1875 Constitution is in the Y.M.C.A.-Baumann case and the Salvation Army case, where it is said the activities must accord with the primary objective and round it out or dovetail into it--though slight, temporary, or in a word immaterial, deviations will not be fatal. Appellants cite authority holding the receipt of income by charitable hospitals from patients able to pay will not deprive them of land tax exemption, if their services are equally available to those who cannot pay and if the income is used in furtherance of their charitable purposes. But those cases are not in point because the income there is not profit and is derived from services precisely in line with their chartered objective.

\* \* \* \* \*

"It seems no Missouri decisions have passed on the status of a publisher of religious literature as a religious or charitable institution entitled to tax exemption. But this subject is covered in an Annotation in 154 A.L.R. 895. The annotation assumes an enterprise of that kind abstractly can be a tax exempt religious or charitable institution and inquires into uses made of its property which various decisions hold will put it in or exclude it from that class. We shall refer to a few of these decisions which are also cited by the parties here. In general it should be understood that in each case the owner of the property was a benevolent corporation or body which engaged in the publishing business for profit, and that the profits were used for its benevolent purposes or those of a parent organization.

\* \* \*"

\* \* \* \* \*

The Court also said:

"Now, getting back to the instant case, one of the chartered objectives of the Publishing House is 'the advancement and extension of knowledge and learning among people generally; and it is authorized to publish and sell (for profit) books and literature, and to acquire and operate real estate and publishing plants for that purpose. Any bona fide schoolbook or encyclopedic publishing concern could qualify under that provision. Nor do we think the situation is altered here by the facts that nearly all the sales for profit were of religious literature and made mostly to members of the denomination. Many books are sold competitively and for profit to a limited public, such as law books to lawyers. Appellants' objectives are commendable, and there is no doubt that a charitable trust may operate for profit. But the only question here is whether the land on which appellants' publishing enterprise is conducted is tax exempt; and our Constitution says tax exempt land must be used exclusively for religious worship or purposes purely charitable. A competitive commercial business operated for profit does not comply with that requirement, even though the profits are devoted to religion."

We call your further attention to the holding of the Missouri Supreme Court in the case of Missouri Goodwill Industries v. Gruner, 210 S.W.(2d) 38. In that case the Court said:

"We agree with appellants that claims for exemption from taxation must be strictly, but reasonably, construed. We also agree that the purposes stated in a corporate charter, while important, are not conclusive; and that if part of the land is used for non-charitable purposes the whole is taxable. \* \* \*

\* \* \* \* \*

"Appellants contend and cite decisions to show that the purposes of Goodwill do not come within the legal definition of 'charitable' and, specifically, that these purposes were not purely charitable because Goodwill's property was used in business or commerce. Evangelical

Lutheran Synod v. Hoehn, 355 Mo. 257, 196 S.W. (2d) 134, 147, has some but not all the aspects of the instant case. In that case we denied tax exemption to a publishing corporation, organized as a subsidiary of the Lutheran Church, which did an extensive business in competition with commercial printing houses.  
\* \* \*

\* \* \* \* \*

"Appellants offer us many definitions of 'charity.' The term is a broad one and broader now than formerly. Appellants say that there can be no charity in a legal sense if the element of gift is lacking. Even so, a gift of money is not required. We think the element of gift is not lacking under the facts of this case. True, the handicapped employees of Goodwill are not recipients of alms. They render some service for the wages they receive and some of them may render full value. Yet, they are given the opportunity, denied them by the harsh competition of the business world, for employment with some remuneration at the start and with the hope of employment in competitive industry after they are trained. We think that constitutes charity and charity of a practical sort, for it helps the helpless and relieves the State of the burden of their support. \* \* \*"

We believe too, that the legal concept of a charity is further illuminated by the Court in the case of Northeast Osteopathic Hospital v. Keitel 197 S.W.(2d) 970, in which the Court says:

"In the case of Nicholas v. Evangelical Deaconess Home, 281 Mo. 182, 219 S.W. 643, the articles of association of the Home stated the objects of the association to be the nursing of the sick and the care of the poor and aged by trained deaconesses; and to found and support a home for deaconesses wherein they could be trained and from which they could be sent as nurses, and wherein sick and aged could be admitted and receive attendance. The charitable character and purpose of the Home clearly appeared in the articles of association; and the parol evidence introduced did not show the Home, in its

actual operation, departed from the charitable character and purpose of the organization as shown by its articles of association. In the case of State ex rel. Alexian Bros. Hospital v. Powers, supra, the hospital, which the court did not doubt was a charitable institution, was conducted, 'by a religious community who devote themselves to the gratuitous care of the sick \* \* \* the indigent poor are its first object.' Briefly, it has been said the test in determining whether a hospital or a corporation organized for the purpose of founding and maintaining a hospital is charitable, or otherwise, is whether or not it is maintained for gain, profit, or advantage. 14 C.J.S. Charities, Sec. 2, subsec. e, p. 422. The reading of the Deaconess Home and Alexian Bros. Hospital cases discloses the home and the hospital were conducted without gain, profit, or advantage. But the fact that pay patients are admitted for treatment would not make hospital the less charitable if the hospital were equally available to those who could not pay and if the income were used in furtherance of the charitable purpose. Nicholas v. Evangelical Deaconess Home, supra; State ex rel. Alexian Bros. Hospital v. Powers, supra. See also Evangelical Lutheran Synod et al. v. Hoehn, supra, Mo. Sup., 196 S.W.(2d) at page 144. It is not considered that the term 'charity' in a legal sense is limited to the popular acceptance of the term, that is, the relief of the poor. Salvation Army v. Hoehn, supra; Jackson v. Phillips, supra. (It is not herein said a hospital may be a charitable institution if it refuses the admittance of the destitute who are in need of hospitalization; but it is plainly seen a charity may be nonetheless a charity if it serves some lower income, although not destitute class. Salvation Army v. Hoehn, supra.) \* \* \*

Numerous other cases sustaining our conclusion that the personality and realty of the Board in the instant case is not tax exempt on the ground that it is used for purely charitable purposes could be mentioned, but we believe that those cases which we have cited are conclusive and adequate.

We are fully cognizant, as everyone must be, of the fine, unselfish work done by this particular Board, and many other similar groups of spiritually dedicated men and women, and we believe that every encouragement should be given to their efforts; however, their operations, even as the operations of others more materially minded, must be confined within the law as the law is written, and which we have construed herein.

CONCLUSION

It is the conclusion of this Department that the personalty and realty owned by the Board of Publications of the General Association of General Baptists, a Corporation, is not tax exempt.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR  
Attorney General

