

TAXATION AND REVENUE: Real property owned by nonprofit
CEMETERIES: cemetery association subject to
taxation until dedicated to pur-
poses of organization.



May 10, 1954

Honorable Andrew J. Higgins
Prosecuting Attorney
Platte County
Platte City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"The County Court of this County has requested that I write for your opinion on the question arising out of the following circumstances:

"In 1920 the Laurel Hills Cemetery Association was incorporated under the provisions of the Benevolent and Non-Profit Corporation Act. Said corporation was formed for the purpose of acquiring a cemetery and maintaining same. It is managed by a board of directors who serve without pay, receive no expenses and the members of said association receive no benefit therefrom.

"After incorporation the association took over the care and maintenance of a then existing cemetery, the lots of which had been platted and sold. The monies held by the association by way of the purchase price of said lots was invested in

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a real estate mortgage. In 1935 the mortgage became in default and the association foreclosed whereupon the association bought in the mortgage tract of 38 acres at the mortgage sale.

"Since the above foreclosure sale the association has held the 38 acres tract in its name and has rented it on a share tenant basis, receiving 50% of the profits therefrom. Such profits have been used in their entirety for maintenance of the aforesaid cemetery and for no other purposes.

"Since coming into the ownership of the 38 acres tract by the sale as aforesaid, the tract has been assessed to the cemetery association for tax purposes. For sometime this association has felt that they are entitled to an exemption from taxes as to the 38 acres tract under the provisions of Section 137.100 R.S. Mo. 1949.

"Question: Is the Laurel Hills Cemetery Association entitled to a tax exemption on a 38 acres tract held apart from the cemetery, the income from which is used solely for maintenance of the cemetery proper?"

Section 137.100, RSMo 1949, referred to in your letter of inquiry reads, in part, as follows:

"The following subjects shall be exempt from taxation for state, county or local purposes:

* * * * *

"(4) Nonprofit cemeteries; * * *."

This statutory provision is but declaratory of a constitutional grant of exemption extended to nonprofit

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cemeteries under the provisions of Section 6, Article X, of the Constitution of Missouri, 1945. This provision reads as follows:

"Exemptions 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."

We assume from your letter of inquiry that the 38 acres of real property therein referred to have not been dedicated for cemetery use. This is apparent by virtue of the incorporation in your letter of inquiry of the statement that since acquisition the real property has been rented on a share tenant basis.

It is our thought that the question which you have proposed has been answered in an opinion of the Supreme Court of Missouri in the case of National Cemetery Association of Missouri, et al., v. Benson et al., reported, 129 S.W. (2d) 842. In the case mentioned the Supreme Court was considering a claim of exemption with respect to unplatted and undedicated real property owned by a cemetery association. The Court had this to say with respect to Section 6, Article X of the Constitution of Missouri, 1875, in so far as pertinent to our present inquiry was substantially the same as Section 6, Article X quoted supra:

"* * * An exemption from taxation can be sustained only when expressed in explicit terms and it cannot be extended beyond the plain meaning of those

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terms. The exemption intended here is to 'cemeteries' as such. The word 'cemeteries' is used independently of the balance of the sentence and the other words do not apply to or affect it. State ex rel. Mount Mora Cemetery Association v. Casey, 210 Mo. 235, 109 S.W. 1. The legislature has not expressed itself on this subject nor do we think that such is necessary before the exemption may be applied. We overrule respondents' contention that this provision is not self-executing. We hold that it is. Generally, constitutional provisions declaring that certain property shall be exempt are self-executing and need no legislation to enforce the exemption.

"We must determine therefore what is included under the word 'cemetery.' A cemetery has been defined to be: 'A place or ground set apart for the burial of the dead, orig. A Roman catacomb, later the consecrated yard of a church so used, now any burial ground, esp. on a large scale; a graveyard; a necropolis.' (Webster's New International Dictionary, 2d Ed.) 'A cemetery is a place set apart, either by municipal authority or private enterprise, for the interment of the dead.' (10 Amer. Juris., Cemeteries, Sec. 2, p. 487.) To invoke the exemption the property must have been 'set apart' for the burial of the dead. We are not concerned with that part of the land used for avenues, drives and walks which are appurtenances necessary to the use and enjoyment of the lot-owners."

We might add that in the case cited a further discussion appears with respect to determination of the precise point of time at which unplatted and undedicated real property becomes a "cemetery" within the meaning of the constitutional provisions, and we therefore direct your further attention thereto.

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CONCLUSION

In the premises we are of the opinion that unplatted and undedicated real property owned by a nonprofit cemetery is not exempt from ad valorem taxes for state, county and school purposes.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General

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