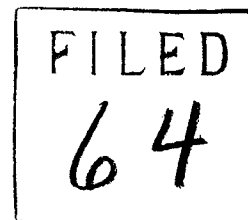


TAXATION AND REVENUE:

Wentworth Military Academy as presently organized is not exempt from the Missouri Sales Tax upon purchases made to or sales made by such organization.

April 20, 1954

File No. 64



Mr. M. E. Morris
Director of Revenue
Jefferson City, Missouri

Attention: L. M. Chiswell, Supervisor, Sales Tax

Dear Sir:

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

"Enclosed herewith you will find certified copies of the following documents filed with the Circuit Court of Lafayette County, Missouri; these having been filed by the Wentworth Military Academy of Lexington, Missouri

"Petition for Pro Forma Decree
Articles of Association.

"These are submitted for the reason that this department has always placed the Wentworth Military Academy in the category of a private school operated for profit and therefore subject to all provisions of paragraph (2) of Section 144.010 R. S. Missouri 1949. We have not changed our position but the Academy now contends that it is provided exemption by reason of the fact the Petition for Pro Forma Decree has been approved by the Court and the Decree issued.

Mr. M. E. Morris

"By mutual agreement with the Academy the department herewith requests an official opinion from your office whether the Academy qualifies for exemption from the application of the Sales Tax to its purchases and sales of tangible personal property used in the conduct of its normal functions and activities."

Two statutes relate to exemptions from the Missouri Sales Tax Act which is found as Chapter 144, RSMo 1949. They are Sections 144.030 and 144.040, RSMo 1949. The latter is applicable to the matter now under inquiry and we quote it in full:

"In addition to the exemptions under section 144.030 there shall also be exempted from the provisions of this chapter all sales made by or to religious, charitable, eleemosynary institutions, penal institutions and industries operated by the department of penal institutions or educational institutions supported by public funds or by religious organizations, in the conduct of the regular religious, charitable, eleemosynary, penal or educational functions and activities, and all sales made by or to a state relief agency in the exercise of relief functions and activities." (Emphasis ours.)

We have examined the Articles of Association and the Pro Forma Decree entered by the Circuit Clerk of Lafayette County, Missouri, pursuant to petition therefor of the Wentworth Military Academy, which you have submitted with your opinion request. It is immediately apparent that the nature of the organization is such that it is not to be classed as an educational institution supported by public funds, and therefore, to such extent the above-quoted statute is inapplicable.

That leaves for consideration the question of whether the corporation as it now exists may be classed as "charitable" within the meaning of the exemption statute. We have examined the many cases defining "charity", "charitable" and "charitable institutions." It seems that the predominate characteristics of such organizations as may qualify as "charitable" may be enumerated as follows:

Mr. M. E. Morris

(1) There must be no pecuniary benefit to any private person over and above reasonable remuneration for services actually performed on behalf of the corporation, and,

(2) The organization must devote the greater portion of its activities to the relief of the indigent even though the class of such indigents may be limited to particular religious, racial or other distinct groups.

There is no doubt but that the organization under consideration qualifies with respect to (1) above. However, it is our opinion that it does not qualify with respect to (2). It will be observed that the Articles of Association clearly disclose that it is proposed to operate the educational institution upon a basis that it will return earnings over and above the cost of operation. The only reference throughout the entire articles with respect to indigent or needy persons is the following sentence found as a part of Article VII.

"It shall have the right to establish or augment an endowment fund or funds for the carrying out of any of the purposes of the corporation, or to provide scholarships for needy and deserving students."

It is further noted that merely the "right" to do and perform such services with respect to indigent or needy students has been reserved and there is no direct obligation upon the board of trustees to in fact carry out such permissive authority. For these reasons we reach the conclusion that the Wentworth Military Academy as presently organized is not a charitable institution within the meaning of Section 144.040, RSMo 1949.

CONCLUSION

In the premises we are of the opinion that the Wentworth Military Academy as presently organized, is not exempt from the Missouri Sales Tax upon purchases made to or sales made by such organization.

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

Very truly yours,

JOHN M. DALTON
Attorney General