

EDUCATIONAL AND RELIGIOUS CORPORATIONS:
EXEMPTION FROM TAXATION:
PROPERTY INCAPABLE OF DIVISION:

(1) The real estate owned by the Belin Memorial University is exempt from taxation to the extent that it is used exclusively for educational and religious purposes. (2) Any property now being used exclusively for religious and educational purposes which subsequently may be used otherwise, will become subject to taxation upon such use. (3) Only the property which is used otherwise than for religious and educational purposes is subject to taxation, except that property incapable of division, some of which is used exclusively for religious and educational purposes and some of which is used otherwise, is taxable in its entirety.



April 9, 1956

Honorable J. P. Morgan
Prosecuting Attorney
Livingston County
Chillicothe, Missouri

Dear Mr. Morgan:

This will acknowledge receipt of your opinion request of March 20, 1956, which is as follows:

"Belin Memorial University which was originally incorporated by pro forma decree in the Circuit Court of St. Louis on October 21, 1954, has recently purchased the real estate of the old Chillicothe Business College. They have now moved their faculty and students to Chillicothe and have now petitioned the County Court for the removal of such property from the assessment books for purposes of taxation.

"The following was copied from the objects and purposes of their Articles of Incorporation and is as follows:

'A. The objects and purposes for which this corporation is formed are the general aim and purpose of serving all Pentecostal people, their churches, and others in the furtherance of promulgating the gospel of the Lord Jesus Christ.

B. The special objects and purposes for which this corporation is formed are the following:

1. To establish, maintain and conduct a suitable organization to manage the affairs of this corporation.

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2. To create, establish, maintain and conduct seminaries, schools, colleges and/or universities in the United States and all foreign countries for the purpose of giving theological education and such other instruction as may be needful and advantageous in preparing and qualifying Ministers, Missionaries and other persons for Christian work, with or without the power to grant such literary, theological, professional or scientific honors or degrees as are usually granted by any seminary, school, college or university in the United States or any foreign country to such students of any such institutions who complete any courses of instruction offered and become entitled thereto; and in testimony thereof to give suitable diplomas and degrees under the seal of the corporation and in accordance with the rules promulgated by the board; and in connection therewith to exercise all powers, rights and duties appertaining to institutions of learning provided for or authorized under laws of the State of Missouri, the United States or any foreign country.'

"The Articles had many further provisions providing for the ownership and operation of radio and T-V stations and very general terms as to the ownership and management of property.

"The County Court has asked that I refer the following questions to you.

1. Is the real estate owned by the school exempt from taxation?

2. The college has already expressed its intention to sub-divide land owned by it immediately adjacent to the City of Chillicothe for the purpose of selling lots and the further purpose of the constructions of homes by it for later resale to the public for profit with such profits, if any, to go to the college. Would such activity result in tax liability if the answer to question #1 is no and if it does make the same taxable does it apply to all of their real estate or only that being promoted for sale of residence properties?"

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Article X, Section 6 of the 1945 Constitution of Missouri is as follows:

"All property, real and personal, of the state, counties and other political subdivisions, and nonprofit 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 137.100, subsection 6, V.A.M.S., is as follows:

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

"(6) 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."

The Supreme Court of Missouri has repeatedly held that a claim for tax exemption must be strictly construed against the property owner and in favor of the public, but the construction must be a reasonable construction. *Salvation Army v. Hoehn*, 188 S.W. 2d 826, 354 Mo. 107.

From the objects and purposes clauses of the Articles of Incorporation, it appears that the Belin Memorial University is a religious and educational corporation. If so, it falls within the tax-exempted classes as set out in the two above-quoted sections. It has been held that the classification as a religious or charitable corporation for purposes of exemption from taxation must be based upon the articles of association, concessions and

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activities of the corporation. Evangelical Lutheran Synod of Missouri, Ohio and Other States vs. Hoehn, 196 S.W. 2d 134, 355 Mo. 257. As stated, however, it appears from the objects and purposes clauses that the Belin Memorial University is a religious and educational corporation, and, there being nothing to indicate that the said university is operating otherwise, it must be presumed that it is a religious and educational corporation.

It is further provided in the above-quoted sections that in order for the property to be exempt, it must not be held for private or corporate profit. From the facts set out in the opinion request, there is nothing to indicate that the property owned by Belin Memorial University is held for private or corporate profit. Rather it appears that Belin Memorial University purchased the real estate from the Chillicothe Business College for the purposes set forth in the objects and purposes clauses of its Articles of Incorporation.

The sections also provide that the property, in order to be exempt from taxation, must be used exclusively for religious worship, for schools and colleges, or for purposes purely charitable with the provision that the property will not be exempt from taxation if used as an investment even though the income or rentals received therefrom be used wholly for religious, educational or charitable purposes. Most of the litigation over tax exemption by institutions of the nature of Belin Memorial University, has involved a construction of this particular part of the two sections. And its application will be the solution to the questions raised in the opinion request.

The Supreme Court of Missouri, in a number of cases, has held that the property must be used exclusively for the purposes for which it is exempt from taxation; that where the occupation and use primarily commercial in character are carried on for revenue even though the revenue be used for such charitable purposes, the property is not exempt from taxation.

See the case of Evangelical Lutheran Synod of Missouri, Ohio and Other States vs. Hoehn, supra, at l.c. 146 where the court said:

"The Hairenik case from Massachusetts thus stated the rule. 'It is settled that the "occupation of real estate by an institution which entitled it to exemption of such real estate is occupation directly for the charitable purposes for which it is incorporated and not occupation for profit even if such profit is used for such charitable purposes." * * *

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The "distinction is between activities primarily commercial in character carried on to obtain revenue to be used for charitable purposes * * * and activities carried on to accomplish directly the charitable purposes of the corporation, incidentally yielding revenue." "

In the case of State ex rel. Koehn vs. St. Louis Young Men's Christian Association, 259 Mo. 233, 168 S.W. 589, the defendant owned two buildings of which 15 per cent of the floor space was rented. The court, in holding that none of the property was exempt from taxation, at l.c. 237, said:

"* * * The ruling in the Fitterer case (157 Mo. 51) is a construction of our present Constitution and Statute, and holds that a building owned by a Masonic lodge, on account of the charitable designs and practices of such lodge, is exempt from taxation, so long as it is used exclusively for such lodge purposes, but when two of the floors of such building are rented for commercial purposes then the entire building becomes subject to taxation. In deciding that case it was said: "There is a very material difference between the "use of a building exclusively for purely charitable purposes," and renting it out, and then applying the proceeds arising therefrom to such purposes. To rent out a building is not to use it within the meaning of the statute, but in order to use it, it must be occupied or made use of. Moreover, by leasing the property the lodge becomes the competitor of all persons having property to rent for similar purposes, and the plain and obvious meaning of the statute is that such property shall not be exempt from taxation."

See the cases of Midwest Bible and Missionary Inst. vs. Sestric, 260 S.W. 2d 25 (1953) and St. Louis Council, Boy Scouts of America vs. Burgess et al., 362 Mo. 146, 240 S.W. 2d 684 (1951). In the latter case, the question was whether or not a 2300 acre tract of land owned by the Boy Scout Council and used in connection with the scouting program by boys for training purposes, should be exempt from taxation. The evidence showed that the entire acreage was not occupied at all times. However, the court held that it was not necessary that the land be so used in order for it to be exempt from taxation. The court, in holding that the tract was to be exempted from taxation, said at l.c. 687:

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"* * * It would be too narrow a construction of the tax exemption statute to hold that all of its property must at all times be used to its capacity to come within the purview of the statute. In other words, the evidence shows a present need for all of the property. It shows a present, actual, regular and exclusive user of all of the property for purposes purely charitable and that no part of it is held or used as an investment. The statute requires no more.* * *"

It having been decided, nothing appearing to the contrary, that Belin Memorial University is a religious and educational corporation whose property is not held for private or corporate profit, the question presented is, is the real estate owned by it exempt from taxation? The answer is that the property is exempt from taxation to the extent that it is used exclusively, as explained above, for the purposes set forth in the objects and purposes clauses of the Articles of Incorporation.

The lots or any other property owned by the university are, if used in a commercial character and not exclusively for educational and religious purposes, not exempt from taxation. And, it is immaterial as to what the university intends to do with said property. It is further immaterial that the revenue from said property may be used for educational and religious purposes.

If any property now being used exclusively for the purposes set forth in the objects and purposes clauses is subsequently used otherwise, such as being subdivided for the purpose of selling same, it will become taxable. Only that property which is used otherwise than for educational and religious purposes exclusively is subject to taxation, so long as said property is capable of division. If the property (see State ex rel. Koeln vs. St. Louis Young Men's Christian Association, supra) is incapable of division, then, even though a portion of it is used exclusively for the objects and purposes as set forth in the objects and purposes clauses, it is nevertheless subject to taxation.

CONCLUSION

It is therefore the opinion of this office that:

(1) The real estate owned by the Belin Memorial University is exempt from taxation to the extent that it is used exclusively for educational and religious purposes.

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(2) Any property now being used exclusively for religious and educational purposes which subsequently may be used otherwise, will become subject to taxation upon such use.

(3) Only the property which is used otherwise than for religious and educational purposes is subject to taxation, except that property incapable of division, some of which is used exclusively for religious and educational purposes and some of which is used otherwise, is taxable in its entirety.

Yours very truly,

JOHN M. DALTON
Attorney General

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