

TAXATION:
TAX EXEMPT REALTY:
CHARITABLE PURPOSES:
EXCLUSIVELY USED FOR
CHARITABLE PURPOSES:

On the facts submitted, real estate owned by Cat's Pause, a not for profit corporation in Shelbina, Missouri, is used for purposes purely charitable.

October 19, 1961



Honorable Rolin T. Boulware
Prosecuting Attorney of
Shelby County
Shelbyville, Missouri

Dear Mr. Boulware:

We are in receipt of your recent request for an opinion as follows:

"The County Court of Shelby County and other interested persons have requested that I ask your office for an opinion regarding the legality of an assessment made by the County Assessor of Shelby County of the Teen Town building owned by the Cat's Pause, a not for profit corporation, in Shelbina, Missouri. The Teen Town organization is represented by Bollow, Crist and Oswald of Shelbina, Missouri and I am enclosing a copy of a letter which they wrote to the State Tax Commission setting out the facts in detail.

"We would like an opinion whether the real estate owned by the Cat's Pause is or is not exempt from taxes as a charitable organization under Article 10, Section 6 of the 1945 Constitution, and under Section 137.100 (5) R.S. Mo. 1959."

In *Young Men's Christian Ass'n v. Sestric*, 362 Mo. 551, 242 S.W. 2d 497, 1.c. 505 the court stated:

"Each of these tax exemption cases is peculiarly one which must be decided upon its own particular facts."

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It is thus apparent that in determining whether a particular parcel of real estate is exempt from taxes, general language in previously decided cases which broadly state applicable principles would not necessarily be decisive of any other case. Obviously, no two cases are exactly alike. Facts differ. And occasionally credibility of witnesses is a factor in ascertaining the facts themselves. For such reason, the views herein expressed are limited to the precise factual situation outlined in the letter, copy of which you have enclosed with your request. Moreover, in our instant ruling we have assumed not only that there are no other facts at all from which contrary inferences may be drawn, but that a full development of the facts by testimony of witnesses would not thereby alter or modify any of the facts herein assumed to be true.

Following are the admitted and assumed facts as stated in such letter:

"The 'Cat's Pause' is an organization incorporated under the Missouri not for profit incorporation act. The purposes of this corporation as stated in its articles are in relevant part: 'to promote moral, intellectual and physical well being of youth . . . to maintain . . . entertainment and a recreation hall, friendly counsel, advise and assist and to encourage group participation by youth in rational social amusements.'

"The purposes clause further provides that the corporation may acquire real and personal property to further the end of the general purposes as stated. The purposes clause further provides that the purpose of the corporation is to operate not for profit.

"In connection with these purposes, the corporation did purchase a building at a price of \$6,000.00, with no down payment, but with payments of \$66.62 a month principal and interest. To date they have paid a total of \$973.60.

"The building is set up to provide simple meals, sandwiches, hot and cold drinks, and general simple restaurant type services. There is of course a juke box, booths, tables, and an area for a dance floor.

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"The corporation itself employs a person to manage all of these described activities in the building. The activities are of course commensurate to the physical plant and include dances, a general meeting place for teenagers, other entertainment in the nature of amusement machines which include the juke box and a pinball machine.

"All of the proceeds go into a general fund of the Cat's Pause and are in turn used for expenses. There are not very adequate account books because the actual income has never been sufficient to pay the expenses and the organization relies upon donations from members in the community who believe in the organization and who want to keep it going . . .

"The entire activities of the Cat's Pause are simply to provide a meeting place for teenage children and to furnish them with the things they demand at that age, being primarily food, soft drinks, a place to dance and amuse themselves under adult supervision."

Section 137.100, RSMo 1959, provides in part that there shall be exempt from taxation "all property, real and personal, actually and regularly used exclusively . . . for purposes purely charitable, and not held for private or corporate profit." Under this section property is exempt from taxation only if such property is not held for private or corporate profit and is used exclusively for purposes purely charitable.

It is clear from the facts as above stated that the property in question is not held for private or corporate profit. The question then is whether such property is used exclusively for purposes purely charitable.

Our Supreme Court is now committed to "a broad concept of the term 'charitable purposes'". *Young Men's Christian Ass'n. v. Sestric*, 362 Mo. 551, 242 S.W. 2d 497, 502. In that case it was said:

" 'Charitable purposes' include those, the accomplishment of which makes it likely that persons affected will

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become substantial and useful citizens and less likely that they will become burdens on society."

In the above Young Men's Christian Ass'n. case, the property was held to be tax exempt. Some of the activities carried on included sponsorship and supervision of numerous boys clubs to prevent juvenile delinquency, and sponsorship of "community boys work". The stated purposes of Y. M. C.A. , including among others the purpose to provide for the welfare for young people by furnishing facilities and places of abode in a wholesome and Christian environment were held to be charitable purposes within the statute exempting property devoted to such purposes from taxation. The fact that the organization operated facilities such as residence halls, cafeterias, barber shops, candy and tobacco counters, cleaning and pressing shop, and an athletic department, was held not to destroy the tax exemption, the court having determined as a fact that there was no profit making purpose in connection therewith, but rather that such use was intimately connected with the accomplishment of the purely charitable purpose of furnishing to young men a total environment in order to accomplish the development of Christian character and fellowship and in order to foster good citizenship and Christian ideals.

In Salvation Army v. Hoehn, 354 Mo. 107, 188 S.W. 2d 826, a large hotel building used by the Salvation Army for providing board and lodging for women, especially those of lower earning capacity and income, under wholesome and decent influences and with proper protection and surroundings calculated to inculcate Christian character and develop good citizenship was held, under the facts, to be used exclusively for purposes purely charitable. The court emphasized that the phrase "exclusively used" has reference to the primary and inherent use of the property, and in such connection ruled that the fact that charges were made for the services did not defeat the exemption.

In Bader Realty & Investment Co. v. St. Louis Housing Authority, 358 Mo. 747, 217 S.W. 2d 489, property employed in a low rent housing project was held to be exclusively used for purposes purely charitable. The avowed purpose of the housing authority was to free areas of congested population from the menace of slums and from crime and juvenile delinquency which results from slum housing. To accomplish such purpose, numerous housing units unfit for proper human habitation were demolished and more modern housing was constructed and rented to low income families.

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In *Christian Businessmen's Committee v. State*, 228 Minn. 549, 38 N. W. 2d 803, 1.c. 812, it was held that "the maintenance of a youth center where young people may gather for recreation in a wholesome atmosphere undoubtedly is a contribution to the public good", and such use was held to be a charitable one. The court ruled that the operation of a restaurant and other services incidental to such youth center did not affect the tax exempt status of the property.

The stated purpose of Cat's Pause is to promote moral, intellectual and physical well being of youth. To accomplish such purpose the property in question is exclusively used for a meeting place of teen age children where wholesome activities are carried on under adult supervision. The project appears to be sponsored and subsidized by good citizens of the community. We are of the opinion that the use of the property for the purpose stated serves to aid in the prevention of juvenile delinquency and to develop good citizenship. The fact that there is no religious overtone, as in the Y. M. C. A. and Salvation Army cases, is of no consequence. The further fact that food and soft drinks are sold and amusement machines provided does not affect our conclusion that the property is exclusively devoted to purposes purely charitable. Such other uses are intimately connected with the accomplishment of the purely charitable purposes of the Cat's Pause. We believe that such uses are subordinate to and reasonably necessary in meeting needs integrated with the purely charitable purposes of the organization. The dominant purpose for which the property is used is charitable, and, therefore, under the decisions of the Supreme Court the property is exclusively used for charitable purposes.

CONCLUSION

It is the opinion of this office that, on the facts submitted, real estate owned by Cat's Pause, a not for profit corporation, (a teen-town type of organization in Shelbina, Missouri) is used for purposes purely charitable and, therefore, is exempt from taxation.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Joseph Nessenfeld.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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