

TAXATION:  
LANDLORD AND TENANT:  
FRATERNITIES:

Building used to house a college social fraternity is not used for charitable or educational purposes within the meaning of Section 6 of Article X of Missouri Constitution. Corporation leasing such property from exempt governmental agency is liable for taxes to extent of its interest therein.

October 19, 1961



Honorable William W. Hoertel  
Prosecuting Attorney  
Phelps County  
Rolla, Missouri

Dear Sir:

We are in receipt of your request for an opinion, which request is as follows:

"As you know, the Missouri School of Mines is located at Rolla, and in connection therewith there are several fraternities and fraternity houses. The Kappa Alpha fraternity is now living in a new house, which has been built on land owned by the University of Missouri, School of Mines and Metallurgy, and is leased to the Student Education and Loan Foundation for 100 years. This Foundation was organized in 1947 pursuant to Chapter 352 of what is now revised statutes of 1959. The Foundation claims to be a charitable organization for the purpose of obtaining money and erecting the present Kappa Alpha fraternity house. This Foundation in turn has leased the building to the Kappa Alpha fraternity for a period of 3 years, with perpetual 3 year options.

"The question is, therefore, whether or not this allegedly charitable organization, the said Student Education and Loan Foundation, is taxable by the County of Phelps with regard to the real estate it owns, considering that it is first an alleged charitable organization, and second that the building is on government owned land."

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Two questions are inherent in your request:

1. Whether the property is exempt as being used for charitable or educational purposes?
2. If not, what is the tax status in view of the University's interest therein?

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

"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."

An examination of the charter of the Students' Education and Loan Foundation shows that the corporate purposes there stated are purely charitable and educational. However, it is clearly set out in the above-quoted constitutional provision that it is the character of the use to which property is subjected that is determinative of its tax-exempt status. Hence, irrespective of the corporate aims of the Foundation, it must first be determined whether the building in question is being used exclusively for religious, educational, or charitable purposes.

While the Missouri Supreme Court has never had occasion to consider the nature of a use of property by a Greek-letter college fraternity with regard to an exemption from taxation, the question has arisen in a number of other states. The courts of those states have been nearly unanimous in holding such property to be taxable under constitutional provisions identical to ours. The rule is stated in an annotation in 66 ALR 2d 904 as follows:

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"With few exceptions the courts have held that college fraternities and sororities are not exempt from taxation, because they exist primarily for the convenience of their members, and are mainly concerned with providing them with board, lodging, and recreation, while any educational, charitable, and benevolent purposes are of secondary importance."

In *Iota Benefit Ass'n v. Douglas County*, 165 Neb. 330, 85 NW2d 726, a fraternity was composed exclusively of medical students who shared a house. It was contended that the association of those studying the same profession, occasional lectures on medical subjects given at the house, and other professional benefits were such as to exempt the property from taxation as being used exclusively for educational purposes. The Court held that, despite these factors, the primary purpose of the fraternity was to provide a private boarding house and dormitory for its members and therefore its property was not exempt.

In *People v. Alpha Pi*, 326 Ill. 573, 158 NE 213, the Court decided that although the fraternity relieved the university by providing rooming facilities for men, it did not come within a statute exempting property used exclusively for beneficent and charitable purposes.

In view of the foregoing, it is the opinion of this office that a building used to house a college social fraternity is not being used exclusively for charitable or educational purposes within the meaning of Section 6 of Article X of the Constitution and is therefore not exempt from taxation under that section.

The remaining question, whether the Foundation is exempt from taxation as the lessee of an exempt governmental agency, is controlled by our Supreme Court's decision in *State ex rel. Benson v. Personnel Housing Corporation, Mo.*, 300 SW2d 506. In that case, the defendant, a private housing corporation, leased from the United States a housing project owned by the Federal Government and constructed on Government-owned land. The lease was for a period of 75 years while the estimated life of the buildings was 35 years. The Court held that the interest of the lessee corporation was taxable and was properly assessed as real estate. In view of that decision, it is our opinion that the Foundation's interest as lessee of the property here in question is taxable.

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CONCLUSION

A building used to house a college social fraternity is not exempt from taxation under Section 6 of Article X of the Constitution of Missouri. The interest of the Students' Education and Loan Foundation in such property is subject to taxation.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James J. Murphy.

Yours very truly,

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THOMAS F. EAGLETON  
Attorney General

JJM:ml