

TAXATION:

Macon Country Club property is not within exemption clauses of Sec. 137.100 RSMo 1959 exempting real and personal property from taxation for state, county or local purposes.

May 29, 1962

OPINION NO. 185.

Honorable Charles A. Powell, Jr.
Prosecuting Attorney
Macon County
Macon, Missouri



Dear Mr. Powell:

This opinion is rendered in reply to your inquiry reading, in part, as follows:

"The precise question I have been asked by the County Court of Macon County relative to possible tax exemption of the Macon Country Club, which exemption this club has requested and believes it is entitled to, is not covered on the facts by the aforesaid opinions I now have.

The Macon Club was organized under the old not for profit law in about 1931 and stated purposes being educational and recreational. Until 1959 the grounds used by the club were rented from private owners, but in that year, the present club purchased the ground, and is in the process of paying for it.

The ground is made available at no cost to the school here for use in golf lessons and practice and by the golf team for tournaments, etc. and in connection with school activities, the club house facilities are also available free.

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Free lessons are given to the children and interested adults of the town, whether members or not, by various of the members who donate their time in the interest of promoting the game of golf and this club.

Membership dues are charged annually of members (\$50.00 per year up to now).

The grounds are being paid for by share sales in the amount of \$200 to each member, as the members can be sold on the plan and secured, and it is required that a person be the holder of such a share to have a vote in the management of the club.

Can you please let me have the opinion of your office on the possibility of exemption from real property taxation of such not for profit organization as I have described, and oblige."

Any exemption from property taxation claimed by the Macon Country Club must be within the following language from Section 137.100 RSMo 1959:

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

* * * * *

(5) 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, except that the exemption herein granted does not include real property not actually used

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or occupied for the purpose of the organization but held or used as investment even though the income or rentals received therefrom is used wholly for religious, educational or charitable purposes". (Underscoring supplied.)

We have underscored the only language found in Section 137.100 RSMo 1959 which can possibly be considered in the light of the factual situation outlined in your inquiry. At the very outset we rule out any contention that the Macon Country Club is tax exempt because its facilities may be made available to schools in carrying out any athletic program, including a golf program, for the reason that under the statute quoted above the property would have to be "actually and regularly used exclusively" for school purposes, and facts presented by you negative any such contention.

In your inquiry you have stated that the Macon Country Club was organized with its stated purposes being "educational and recreational". The facts stated in your inquiry regarding the actual use to which the property of the Macon Country Club is put will not, in our opinion, justify a conclusion that such property is dedicated to "purposes purely charitable" as that language is used in Section 137.100 RSMo 1959. In reviewing the factual situation presented by you it must be reasonably concluded that the uses to which the Macon Country Club is being put do not measure up to a "charity" as stated in the following language from *Salvation Army v. Hoehn*, 354 Mo. 107, 1.c. 114, 188 SW (2d) 826:

"Probably the most comprehensive and carefully drawn definition of a charity that has ever been formulated is that it is a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting

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or maintaining public buildings
or works or otherwise lessening
the burden of government.* * *".

Turning now to the terms "educational" and "recreational" as stated purposes of organization of the Macon Country Club. Such terms are not used in Section 137.100 RSMo 1959, and it is not possible to read them into the statute. The conclusion hereinafter stated is made in view of the following language from *Midwest Bible and Missionary Institute v. Sestric*, 364 Mo. 167, 1.c. 174, 260 SW (2d) 25:

"We are mindful of the settled rule that exemption statutes are strictly but reasonably (so as not to curtail the intended scope of the exemption) construed.' * * * And it is of course true that each tax exemption case is 'peculiarly one which must be decided upon its own facts'. Taxation is the rule. Exemption therefrom is the exception. Claims for exemption are not favored in the law."

CONCLUSION

It is the opinion of this office that under the facts considered in this opinion the property of the Macon Country Club is not within the exemption clauses of Section 137.100 RSMo 1959, exempting real and personal property from taxation for state, county or local purposes.

The foregoing opinion which I hereby approve was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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