



January 21, 1963

Honorable Robert A. Bonney
Prosecuting Attorney
Wayne County
Box 248
Piedmont, Missouri

Dear Mr. Bonney:

We have your request for an opinion of this office as to whether a tract of land owned by the Piedmont Chamber of Commerce, a benevolent association formed pursuant to Chapter 352, RSMo 1959, is exempt from taxation under the provisions of Section 137.100, RSMo 1959. You set out the circumstances involved in the acquisition of this real estate as follows:

"The Chamber acquired by purchase a tract of land of approximately 10 acres in Wayne County. Title was taken in the name of the Chamber. There are no Deeds of Trust or other liens on the premises. It is the desire and hope of the Chamber eventually to either lease or sell the premises to a manufacturing enterprise which would erect a factory on the premises so that the employment opportunities in the area may be increased. The rental which might be received (or the sales proceeds if the premises were sold) would be used for the purposes set out in paragraph four of the Articles. The Chamber has been unable to either sell or lease the premises to date. The property has not been used in any manner and it has not generated any income so far."

Section 137.100(5), RSMo 1959, the only portion of that section relevant here, is as follows:

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"(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 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."

It can be seen that it is the use of property that is determinative of its tax exempt status. Moreover, that use must be regular and exclusive. *St. Louis Gospel Center v. Prose, Mo.*, 280 S. W. 2d 827; *State ex rel. Koeln v. St. Louis YMCA*, 259 Mo. 233, 168 S. W. 589.

In the situation which you present, it is apparent that the property in question is not being used for religious, educational or charitable purposes. That it is not presently being used for some other purpose is of no consequence; the statute requires that property to be exempted must be "actually and regularly used" for one or more of the stated purposes.

Even if the question were to be considered from the point of view of the intended use of the property, our conclusion remains unchanged. From the facts submitted it is clear that the owners are hopeful of inducing private parties to use the tract for a profit-making enterprise, which, of course, is not an exempt use. Although any proceeds received by the Chamber of Commerce from the sale or lease of the property are to be used for educational or charitable purposes, the exception contained in the above-quoted statute specifically eliminates this fact as a consideration in determining the tax exempt status of property.

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For the reasons stated, it is our opinion that the property of which you inquire is not exempt from taxation under Section 137.100, RSMo 1959.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

JJM lc