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CHARITIES:
 SCHOLARSHIP FUND:
 SCHOOLS:
 STATUTORY CONSTRUCTION:
 TAXATION: EXEMPTIONS
 SALES-USE TAX

The phrase "supported by public funds or by religious organizations as used in Section 144.040, RSMo, modifies only "educational institutions" and a religious, charitable or eleemosynary institution may be exempt from payment of sales and use taxes even though they are supported entirely by private funds.

Thus the John J. Dwyer Funds, Inc., an organization incorporated to provide scholarships to worthy students using funds donated by private persons or firms, is exempt as a charitable organization from the payment of sales and use taxes under Section 144.040, RSMo.

October 11, 1966

OPINION NO. 173

FILED
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Honorable Thomas A. David
 Director of Department of Revenue
 State of Missouri
 Jefferson City, Missouri

Dear Mr. David:

This is in answer to your request for an opinion of this office as to whether the John J. Dwyer Fund, Inc., is exempt from sales and use taxes. It is my understanding that this corporation was organized as a not-for-profit corporation under Chapter 355, RSMo, to give college scholarship to deserving people.

The corporation, sometimes referred to as the "Fund", requested an exemption as a charitable or eleemosynary institution within the meaning of Section 144.040, RSMo, which reads as follows:

"In addition to the exemptions under section 144.030 there shall also be exempted from the provisions of sections 144.010 to 144.510 all sales made by or to religious, charitable, eleemosynary institutions, penal institutions and industries operated by the department of penal institutions or educational institutions supported by public funds or by religious organizations, in the conduct of the regular religious, charitable, eleemosynary, penal or educational functions and activities, and all sales made by or to a state relief agency in the exercise of relief functions and activities."

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This request was tentatively denied by the Department of Revenue on the basis that the Fund was not an organization supported by public funds or by a religious organization. This denial was premised on a long standing interpretation of Section 144.040 by the Department that the qualifying phrase, "supported by public funds or by religious organizations", modifies each of the preceding elements; that is, to secure an exemption from the sales and use tax provisions, a religious, charitable or eleemosynary institution or a penal institution or an industry operated by the department of penal institutions must also be supported by public funds or by religious organizations.

The information we have received indicates that the "Fund" was organized for the purpose of receiving donations and expending the sums received to provide higher educational opportunities to worthy students through partial or total scholarships at accredited colleges or universities located within the State of Missouri.

It has generally been held that gifts for schools and scholars and for educational purposes are regarded as charitable in nature. 14 C.J.S. Charities, Section 15, p. 444, Bogdanovich v. Bogdanovich, 360 Mo. 753, 230 S.W.2d 695; Burrier v. Jones, 338 Mo. 679, 92 S.W.2d 885. Therefore, for purposes of this opinion, we will assume the John J. Dwyer Fund, Inc., to be a charitable institution.

Hence the question to be determined is whether a charitable (or religious or eleemosynary) institution supported by private donations rather than by public funds or by religious organizations may be granted an exemption from sales and use tax under the provisions of Section 144.040.

While making this determination, we are mindful that the provision in question is an exempting statute which must be strictly construed against the taxpayer, although such construction should not force a conclusion that the legislative intent was other than a reasonable construction of the language used in the circumstances shows it to be. *Hern v. Carpenter*, Mo. Sup., 312 S.W.2d 823. *Frisco Emp. Hospital Ass'n v. State Tax Commission of Missouri*, Mo. Sup., 381 S.W.2d 772. This rule applies even though the exemption is claimed as a charitable organization. *Bethesda General Hospital v. State Tax Commission*, Mo. Sup., 396 S.W.2d 631; *Y.M.C.A. v. Sestric*, 362 Mo. 551, 242 S.W.2d 497; *Salvation Army v. Hoehn*, 354 Mo. 107, 188 S.W.2d 826.

We are also mindful of the rule that where there is doubt and ambiguity as to the meaning of a statute, the construction given by the officers charged with its administration shall be considered to determine its meaning. *England v. Eckley*, Mo. Sup., 330 S.W.2d 738, 744; *Rathjen v. Reorganized School District R-II of Shelby County*, 365 Mo. 518, 284 S.W.2d 516; *Wiley v. Stewart Sand & Material Co.*, Mo. App., 206 S.W.2d 362.

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If construed in accordance with strict grammatical exactitude, the phrase "supported by public funds or by religious organizations" could be held to modify "religious, charitable, eleemosynary institutions". This would result from applying the general rule that "when a conjunction connects two coordinate clauses or phrases, a comma should precede the conjunction if it is intended to prevent following qualifying phrases from modifying the clause which precedes the conjunction." Application of Graham, 199 S.W.2d 68, 74-75; In re Perkins, 234 Mo. App. 716, 117 S.W.2d 686.

However, in the interpretation of statutes, the punctuation thereof should not be decisive. It is a minor element in the interpretation of a statute and if the intent of the legislature is reasonably clear, errors in punctuation may be disregarded. State ex rel. Geaslin v. Walker, Mo. Sup., 257 S.W. 470; State ex rel. and to Use of Tadlock v. Mooneyham, Mo. App., 253 S.W. 1098; 50 Am. Jur., Statutes, Section 253.

In our opinion, a strict construction of Section 144.040 under the rule of the Graham and Perkins cases would not correctly reflect the intention of the legislature to provide a tax exemption to the type of institutions named in the statute. State tax exemptions are given in return for the performance of functions which benefit the public. Exemptions in favor of charitable institutions are based upon the premise that a benefit is conferred upon the public by them, with consequent relief, to some extent, of the burden imposed upon the state to care for and advance the interests of its citizens. Bethesda General Hospital v. State Tax Commission, supra, l.c. 633, 634.

The charitable function which furnishes the reason for the exemption may be carried on as well by an institution supported by private donations as those supported either by public funds or religious organizations. This philosophy is expressed in Section 137.100 which implements Article X, Section 6, of our Missouri Constitution 1945, which exempts from property taxes all property not held for private or corporate profit and used for purposes purely charitable. We do not feel that the legislature, by omitting the comma preceding the word "or" in Section 144.040, intended to deny the traditional exemption provided to the many worthy charities supported by private donations.

This interpretation of the legislative intent may be supported by a consideration of the statute itself. A careful reading of Section 144.040 indicates that only educational institutions were required to be supported by public funds or by religious organizations.

The modifying phrase, "supported by public funds or by religious organizations" would be meaningless if construed to qualify "penal institutions and industries operated by penal institutions" as penal institutions are operated as public institutions and thus

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by necessity are supported by public funds. The same objection applies to construing this phrase to qualify "religious * * * institutions". Generally it would be unconstitutional to support a religious institution with public funds and a requirement that a religious institution, to be exempt from sales and use tax must be supported by a religious organization, would result in a meaningless redundancy.

The use of the word "institutions" throughout the statute seems to divide such "institutions" into separate classes of exemptions and thus would prevent the phrase "supported by public funds or religious organizations" from referring back any further than the preceding class of institution, the educational institution. It might be noted that while religious, charitable and penal institutions in practice are normally non-profit institutions, and charitable in nature, many private educational institutions are non-charitable, profit making organizations. There is, therefore, a practical need for the qualifying phrase limiting the exemption granted educational institutions.

In the opinion of this office, the exemptions granted by Section 144.040 are divided into three classifications: 1) religious, charitable and eleemosynary institutions; 2) penal institutions and industries operated by the department of penal institutions; and 3) educational institutions supported by public funds or by religious organizations. This classification would be in keeping with the traditional method of tax exemption which we believe is what was intended by the legislature.

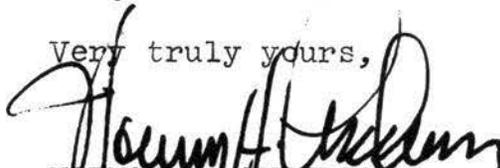
CONCLUSION

In our opinion, the phrase "supported by public funds or by religious organizations" as used in Section 144.040, RSMo, modifies only "educational institutions" and a religious, charitable or eleemosynary institution may be exempt from payment of sales and use taxes even though they are supported entirely by private funds.

Thus the John J. Dwyer, Inc., an organization incorporated to provide scholarships to worthy students using funds donated by private persons or firms, is exempt as a charitable organization from the payment of sales and use taxes under Section 144.040, RSMo.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John H. Denman.

Very truly yours,



NORMAN H. ANDERSON
Attorney General