

SCHOOLS: Tangible personal property leased  
TAXATION (EXEMPTION): to a school district at a profit  
is not exempt from taxation under  
Article X, Section 6, Missouri Constitution, or under Section  
137.100, RSMo 1969. Furthermore, a school district may agree, as  
part of the total yearly lease payment, to pay the amount of any  
taxes levied on the tangible personal property leased to the school  
district.

OPINION NO. 32

August 18, 1971

Honorable Ronald M. Belt  
State Representative  
District No. 96  
108 Vine  
Macon, Missouri 63552



Dear Representative Belt:

This is in response to your request for an opinion from this office in regard to the following inquiry:

"The Shelby County CI Schools of Shelbyville, Missouri, leases typewriters from the Litton Business Systems, Inc. Under the terms of the lease it provides that 'any and all taxes that may apply hereto or be levied upon equipment leased hereunder, shall be the responsibility of the Lessee'. There are taxes levied by Shelby County upon the typewriters and Litton now seeks to collect the tax from the Shelby County CI Schools. If the School owned the typewriters, of course there would be no tax.

"I seek an opinion as to whether or not under a lease provision whereby the Lessee is to pay the taxes a school district then becomes obligated to pay personal property taxes."

As further background for this opinion request, you enclosed a copy of an "Equipment Lease Agreement" between Litton Business Systems, Inc., Royal Typewriter Division, Lessor, and Shelby County C-1 Schools, Lessee. Basically, the agreement provides for the leasing of thirty typewriter units for sixty months with annual lease payments. Two of the terms and conditions of this agreement are of particular interest:

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"1. TAXES: Any and all taxes which may apply hereto or be levied upon equipment leased hereunder, shall be the responsibility of the Lessee.

\* \* \*

"3. TITLE: Title to the equipment leased hereunder shall at all times remain in the Lessor and Lessee agrees and covenants not to hold itself out at any time as having title to the equipment."

In addition to the agreement, you enclose a copy of an invoice from Litton Industries Credit Corporation, a Division of Litton Industries, to the Shelby County C-1 Schools in the amount of \$67.29 for "Shelby County Personal Property Tax 1969." It will be assumed in writing this opinion that the personal property taxes were levied against Litton Industries and that the invoice enclosed with your letter is the method by which Litton Industries seeks reimbursement for the taxes levied on the subject typewriters. We understand your inquiry to be whether the Shelby County C-1 School District is obligated to pay the invoice as submitted by Litton Industries Credit Corporation.

Tangible personal property is defined as follows in Section 137.010(3), RSMo 1969, for the purpose of the laws governing taxation in the State of Missouri:

"(3) 'Tangible personal property' includes every tangible thing being the subject of ownership or part ownership whether animate or inanimate, other than money, and not forming part or parcel of real property as herein defined."

The owner of tangible personal property is responsible for the tangible personal property tax. See Sections 137.090 and 137.095, RSMo 1969. Under the lease agreement, particularly paragraph 3 of the terms and conditions, the owner of the leased equipment is the lessor, Litton Business Systems, and, therefore, Litton would be responsible for the personal property taxes levied on these typewriters.

However, certain tangible personal property is exempt from taxation pursuant to Article X, Section 6 of the Missouri Constitution:

"Exemptions from taxation. All property, real and personal, of the state, counties and other political subdivisions, and nonprofit cemeteries,

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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."  
[Emphasis supplied]

This section of the Missouri Constitution is implemented by Section 137.100, RSMo 1969, which reads in part as follows:

"Certain property exempt from taxes.--The following subjects are exempt from taxation for state, county or local purposes:

(1) Lands and other property belonging to this state;

(2) Lands and other property belonging to any city, county or other political subdivision in this state, including market houses, town halls and other public structures, with their furniture and equipments, and on public squares and lots kept open for health, use or ornament;

\* \* \*

(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."

Section 6 of Article X and Section 137.100 contemplate two separate kinds of personal property which is exempt from taxation. The first is based on ownership--"property of" or "belonging to" the enumerated governmental entities plus nonprofit cemeteries. The second depends on the use to which the property is put--property not

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held for private or corporate profit and "used exclusively" for religious, educational, or charitable purposes. The Missouri Supreme Court in School Dist. of Berkeley v. Evans, 250 S.W.2d 499, 500 (Mo. 1952) called attention to the two tests to be applied in determining whether property is exempt from taxation:

"It will be noted that the section of the Constitution provides that all property of the state and other political subdivisions shall be exempt from taxation. . . . The test to be applied to property held by the state and its political subdivisions is ownership while the test as to other exemptions which may be granted by general law is whether the property is being used for the purposes enumerated. . . ."  
[Emphasis in original]

Are these typewriters owned by a political subdivision of the state? Previously, we have called attention to the lease agreement, particularly paragraph 3 of the terms and conditions, under which Litton, not the school district, is the owner of this equipment. Therefore, the property is not exempt from taxation under the "ownership" test.

The second kind of personal property exempt from taxation is "all property, actually and regularly used exclusively for religious worship, for schools and colleges, or for purposes purely charitable." Under this exemption the use of the property rather than ownership is the sole consideration in determining whether it is exempt from taxation.

When privately owned property is leased to a school and used by the school exclusively for school purposes, is the "use" of the property that of the lessor and owner, or is it that of the lessee who uses it for exempt purposes? Based on Attorney General's Opinion No. 31, June 8, 1967, to Honorable Bill D. Burlison (a copy of which is enclosed) and particularly the decision of the Missouri Supreme Court in State ex rel. Hammer v. Macgurn, 187 Mo. 238, 86 S.W. 138 (1905) quoted at length in that opinion, we conclude that the "use" of the property is that of the lessor when the property is leased for a profit. In the instant case we must assume that Litton Business Systems is leasing the typewriters for a profit and, therefore, these typewriters would not be exempt from taxation because of their use by the school district.

The agreement in question obligates the Shelby County C-1 School District to pay a certain amount for the lease of these typewriters. Part of the total lease payment is the amount of any taxes which are levied against the lessor's property. The amount

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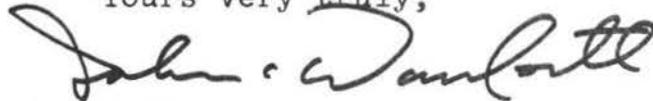
of tax levied against such typewriters is ascertainable from public records at the time the obligation is payable by the school district. Litton Business Systems, the lessor, has no control over the amount of taxes levied on these typewriters. Consequently, we do not believe this agreement conflicts with Section 432.070, RSMo 1969. Therefore, the invoice from the lessor to the Shelby County C-1 School District, which is the subject of your inquiry, should be interpreted as part of the Shelby County C-1 School District's contractual obligation under the equipment lease agreement. We are aware of no provision in the law which prevents a school district of the State of Missouri from contracting to pay, as part of its total obligation under a lease, an amount of money equal to the amount paid by the lessor and owner of the equipment for taxes levied on the equipment leased to the school district.

#### CONCLUSION

It is the conclusion of this office that tangible personal property leased to a school district at a profit is not exempt from taxation under Article X, Section 6, Missouri Constitution, or under Section 137.100, RSMo 1969. Furthermore, a school district may agree, as part of the total yearly lease payment, to pay the amount of any taxes levied on the tangible personal property leased to the school district.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, D. Brook Bartlett.

Yours very truly,



JOHN C. DANFORTH  
Attorney General

Enclosure: Op. No. 31  
6-8-67, Burlison