

TAX EXEMPT LAND:

A tract of land owned by the Branson Chamber of Commerce, which tract is used only for presenting a Christmas Nativity scene is used exclusively for charitable purposes and is not held for private or corporate profit and is exempt from taxation.



January 18, 1960

Honorable Clay Cantwell
Prosecuting Attorney
Taney County
Forsyth, Missouri

Dear Mr. Cantwell:

Your recent request for an official opinion reads:

"Would you please give me a ruling upon a matter of property taxation. The problem is as follows: The Branson Chamber of Commerce of Branson, Missouri holds title in that name to some real estate in Branson which is a vacant tract of ground and is used for the purpose of displaying the annual Christmas Nativity Scene in Branson.

"The Branson Chamber of Commerce is an incorporated body having received its proforma decree in the year of 1946. Is that real estate subject to taxation? There is no income derived from the real estate, and the sole use is for the purpose of displaying the Christmas Scene."

You have stated orally subsequent to writing the above letter that the real estate in question is used solely for displaying the annual Christmas Nativity Scene and that there is no financial return of any kind whatsoever from this tract of land which is owned by the Branson Chamber of Commerce which is incorporated as a nonprofit organization.

Honorable Clay Cantwell

Such being the situation, we believe that Section 137.100, Section 1 of House Bill No. 108, enacted by the 70th General Assembly, is applicable in this situation. That section reads in part:

"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 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. As amended Laws 1959, p. _____, H.B. No. 108, §1."

We also note the case of Taylor v. Baldwin, 247 SW2d 741. In that case the Missouri Supreme Court stated (l.c. 749 [1-4]):

"We restate some of the basic principles within which the questions raised by appellant must be considered. 'Any gift not inconsistent with existing laws, which is promotive of science, or tends to the education, enlightenment, benefit, or amelioration of the condition of mankind, or the diffusion of useful knowledge * * * is a charity * * * and it is none the less a charity because not so denominated in the instrument which evidences the gift.' Parsons v. Childs, 345 Mo. 689, 136 SW2d 327, 330; Missouri Historical Society v. Academy of Science, 94 Mo. 459, 8 SW 346."

In discussing Section 6 of Article 10 of the Missouri Constitution and what is now subsection 5 of Section 137.100, supra, the Missouri Supreme Court in the case of St. Louis Gospel Center v. Prose, 280 SW2d 827, stated (l.c. 830):

Honorable Clay Cantwell

" * * * But in determining whether plaintiff's property is exempt from taxation under the cited constitutional and statutory provisions, supra, it is, in the main, the 'exclusive' use of the buildings for such purpose that determines the application of tax-exempting intentment. * * *"

In view of the above it is our belief that the property in question is not subject to taxation because of the fact that it is not held for private or corporate profit and is used exclusively for purely a charitable purpose.

CONCLUSION

It is the opinion of this department that a tract of land owned by the Branson Chamber of Commerce, which tract is used only for presenting a Christmas Nativity Scene is used exclusively for charitable purposes and is not held for private or corporate profit and is exempt from taxation.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Yours very truly,

John M. Dalton
Attorney General

HPW:vlw