TAXATION:
EXEMPTIONS:

Burden of establishing right to exemption from taxation upon person claiming exemption. Each claim for exemption a question of fact must be decided on merits. College fraternities and labor unions not entitled to tax exemption as non-profit, charitable organizations.

FILED
31

June 28, 1955

Honorable Benjamin A. Francka
Assisting Prosecuting Attorney
Greene County
Springfield, Missouri

Dear Mr. Francka:

Reference is made to your request for an official opinion of this office which is as follows:

> "We have been requested by our assessor for an opinion as to whether or not the real and personal property of college fraternities and labor unions is exempt from taxation. The property is used exclusively for the activities of the respective organizations owning it. The fraternities, in many instances, operate fraternity houses which are used as a residence for members and for activities of the fraternity. The property is, in most instances, held by a local organization incorporated under a pro forma decree.
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> "We respectfully request an opinion from your office as to whether the above properties are exempt from taxation."

It must be first concluded that the college fraternities referred to in your letter are Greek letter societies at colleges or universities located in Greene County. It is further assumed that these societies are organized not for pecuniary profit, that their objects and purposes are to provide a home at or near the respective university or college for member students to live at moderate cost while attending the university or college. Another purpose is to promote the general moral, educational, and social welfare of the student members. It is further assumed that the university or college holds no title or interest in the real estate about which the question of assessment and taxation arises.

With the above assumptions in mind, the opinion herewith will be based thereon bearing in mind, however, that the situation could alter the outcome of the opinion where a change in purpose when it is actual could possibly alter the liability for real estate taxes. In regard to purposes for which charitable, educational, or religious organizations are committed, the court in Midwest Bible and Missionary Institute v. Sestric, 260 S.W.2d25, l.c. 29-30 stated as follows:

> "(2-6) In Y.M.C.A. v. Sestric, supra (362 Mo. 551, 242 S.W. 2d 502), we stated the applicable rule of construction in these words: '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. We also have in mind that charitable use exemption depends upon the use made of the property and not solely upon the stated purposes of an organization.' See also, Bader Realty & Investment Co. v. St. Louis Housing Authority, supra. 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."

In the Midwest case the Midwest Bible and Missionary Institute owned the buildings, the taxation of which was in controversy. In that case plaintiff showed that it was not only educational and religious but also charitable insofar as it operated by virtue of voluntary contributions to make up a constant annual deficit.

The opinion in the above case gives the constitutional and statutory background of the question involved where at l.c. 29 stated as follows:

> "(1) Section 6 of Article X of the Constitution:
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> " 'Section 6. Exemptions from taxation.--All property, real and personal, of the state, counties and other political subdivisions, and nonprofit cemeteries, 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.'
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> "(2) Section 137.100 (6) RSMo 1949, V.A.M.S.:
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> " ' 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 shall be exempted from taxation for state, city, county, school, and local purposes; provided, however, that the exemption herein granted shall 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 be used wholly for religious, educational or charitable purposes.' * * *"

As to the words exclusively as used in the Constitution and again in the statute, the court quoted with approval from the case of Spillers v. Johnston, 214 Mo. 656, 113 S.W. 1083, where at l.c. 30 of the Midwest case, supra, it was said as follows:

> " * * * In that case this Court concluded that the fact that Colonel Johnston, the owner and active head of the Kemper Academy, lived within the school building with his family was not decisive against exemption but that it served to achieve the school's objectives. It was held there that the words of the statute 'used exclusively' or 'exclusively used' has reference 'to the primary and inherent use as over against a mere secondary and incidental use. * * * If the incidental use (in this instance residing in the building) does not interrupt the exclusive occupation of the building for school purposes, but dovetails into or rounds out those purposes, then there could fairly be said to be left an exclusive use in the school on which the law lays hold.' * * *"

It must be remembered that the college or university not only does not own the fraternity property but only has indirect control over it. By indirect control is meant

control by the rules of the college or university in regard to the conduct of its students with of course power of suspension from school, of the individual members.

In State ex rel. Gehner, 11 S.W. (2d) l.c. 37, the Supreme Court said:

> "It will therefore be seen that the test for tax exemption is not the number of good purposes to which a building may be put, nor the amount of good derived by the general public in the operation of such purposes, but whether the building is used exclusively for religious, educational, or charitable purposes. If it is used for one or more commercial purposes, it is not exclusively used for the exempted purposes, but is subject to taxation."

Here it would be difficult to envision any commercial purpose carried on by a college fraternity. In People ex rel. Delta Kappa Epsilon Society v. Lawler, 77 N.Y.S. 840, l.c. 843, the court said:

> " * * * And while it may be said that the relator is connected with Hamilton College, and that its chapter house is in a certain sense an adjunct thereto, yet so far as ownership, occupation, and control are concerned it is entirely independent of the college. Its primary purpose is to afford the members of the fraternity owning it with an abiding place while attending college. It is there that they eat and sleep; it is there that they mingle with each other in social intercourse; it is there that they entertain their friends, and to that end indulge in dancing and other similar amusements. In short, it is to all intents and purposes a club house, a place for rest, recreation, and fraternal intercourse, rather than for the purposes for which it is claimed to have been organized, which purposes are plainly secondary and incidental; and, such being the case, we do not see how, within the well-settled policy of the law to which allusion has just been made, it is entitled to exemption from taxation."

From the foregoing, since the burden is put upon claimants for exemption by the cases interpreting the constitutional requirements, it is believed that the real and personal property of a college fraternity organized with the usual and ordinary purposes of organization as commonly accepted is certainly not entitled to exemption from taxation. It is not used exclusively for religious worship, for a school or college, and in accordance with common understanding as to the purpose and activity of a college fraternity, its use is not for purely charitable purposes.

As for labor organizations it must be first concluded that the labor unions intended are regular labor unions and are not agricultural or horticultural societies. The latter are exempt by the Constitution and there is no need to justify any possible discrimination or favoritism since they are so exempt.

The only question that appears here is in what position labor unions fit into the exemptions in the constitutional arrangement. They are non-profit. They are organized for the benefit of a great number of people in each community. Some of their work is charitable, but it is difficult to envision a union organized for purely charitable purposes. Again as in the matter of fraternities each individual organization presents a question of fact upon which the general law must be applied. However, the burden of proof is upon the entity claiming an exemption and it must be alleged, claimed, and proved that they are so exempt. It is assumed that the union here in question is a tightly bound group of individuals joined together for the economic protection and advancement of the individuals. In the matter of Integrating the Bar in 259 S.W. (2d) 144, l.c. 151, the Arkansas Supreme Court said as follows:

> " * * * Labor unions are organized primarily for the purpose of bargaining with management in the matter of wages, hours of employment, working conditions, etc. * * * "

Other cases concurring in this definition are: Com. v. Shipherd, 41 A (2d) 429, 431, 157 Pa. Super 27; People v. Graf 24 N.Y.S. (2d) 683, 685, 261 App. Div. 188.

Honorable Benjamin A. Francka

There can be found no provision in the Constitution for the exemption of labor organizations. The mere fact that a corporation is organized not for profit is not justification for tax exemption. This office gave an opinion to that effect May 15, 1947, to Honorable Roy A. Jones, Prosecuting Attorney of Johnson County. That opinion was to the effect that real estate belonging to a non-profit organization is not exempt from taxation. A copy of that opinion is attached hereto. Since the enactment of Ch. 355 Cum. Supplement, 1953, there may be many kinds of not-for-profit corporations. The exemption from taxation, however, is limited by the constitutional provisions of Sec. 6, Art. 10 of the Constitution of 1945.

CONCLUSION

It is therefore the opinion of this office that the burden of establishing a right to exemption from taxation under the Constitution of 1945 is placed upon the entity claiming such a right. Each individual case stands upon its own merits in the establishment of such right. College fraternities as the organizations are commonly known and labor unions are not entitled to exemption from taxation except where those organizations have as their primary and inherent purposes activities purely charitable.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. James W. Faris.

Yours very truly,

JOHN M. DALTON
Attorney General

JWF:gm
Enclosure
5/15/47 to Roy A. Jones