TAXATION.

TAXABLE PROPERTY: 1) The personal property of the Columbia Humane Society at Columbia, Boone County, Mo. is exempt from taxation under Sec. 6, Art. X of the Constitution of Missouri, 1945, and Sec. 137.100, RSMo 1949, because such property is used exclusively for purposes purely charitable and benevolent; 2) Individuals named herein are the owners of certain buildings by the terms of a contract severing said buildings from real estate, conveyed by them to the State Highway Commission and as personalty such property is subject to taxation.

FILED
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March 24, 1953

Honorable Philip A. Grimes
Prosecuting Attorney
Boone County
Columbia, Missouri

Dear Mr. Grimes:

This will be the opinion you requested by letter from this Department respecting the tax liability of a certain society and individuals of the City of Columbia, Boone County, Missouri. The letter follows:

> "I have been requested for an opinion as concerns the tax liability of persons owning the personal property located on real estate belonging to the State of Missouri. I will cite the following as an example:
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> "The Humane Society here in Columbia owns some real estate with a house and other small buildings located thereon. The real estate was sold to the State of Missouri for highway purposes and the land is now in the name of the State of Missouri. It is my understanding, however, that the road may not be built for a number of years and that the State of Missouri made some sort of provisions whereby the persons owning such property could continue to live on the property and to use the buildings, etc. until notified by the State of Missouri to vacate. It is my further understanding that the buildings, dwellings, etc. are considered personal property under this situation and that they may be moved in this case by the Humane Society. There is no real estate assessed against the people, but the Assessor does assess the dwelling and other buildings as

Honorable Philip A. Grimes:

> personal property. This is true not only of the Humane Society but of other individual persons. These persons and the Humane Society now claim that it is improper and that the tax should not be assessed to them and that they have no tax liability.
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> "This poses two questions. One is the question of the status of the Humane Society with reference to whether it is tax exempt or not and secondly, are the private individuals who own valuable buildings liable for personal tax on the buildings, which are or were permanent fixtures located on real estate taken over by the State of Missouri for highway purposes.
>
> "It is my understanding that the deal made with the state is that the owners have a certain number of years in which to move all of the buildings, etc. Will you please render me your opinion on this set of circumstances."

Your letter submits two questions. One, whether the Columbia Humane Society, as the owner of property located in Columbia, Missouri, is tax exempt as a charitable or benevolent corporation. Two, whether certain individuals, who have sold real estate, upon which were then and are now located certain buildings, to the State of Missouri for highway purposes, with the agreement that such individuals may remove such buildings within a certain period of time after being notified by the State to remove such buildings, are subject to taxation on such buildings.

We are advised in your letter that on July 3, 1944, the Columbia Humane Society was incorporated in the Circuit Court of Boone County, Missouri by pro forma decree as a benevolent corporation for the purpose of preventing cruelty to animals. Contact by correspondence with the Missouri State Highway Commission confirms the statement in your letter that the Columbia Humane Society, by H.J. Waters, President, conveyed by deed on December 9, 1949, certain real estate situated in Boone County, Missouri, to the Missouri State Highway Commission, upon which real estate several buildings are located. In the deed of conveyance it is stipulated and agreed that said Humane

Society shall be permitted to occupy and use such buildings for a period of three years, without any rental charge; that after such free rental period has expired, said Humane Society has the right to remove, and agrees to remove, said buildings at its expense, not later than thirty (30) days after receiving written notice from the Division Engineer of the Missouri State Highway Commission; that in the event the said Humane Society fails or refuses to comply with the agreement within the thirty (30) day time limit to remove such buildings, then said buildings shall become the property of the Missouri State Highway Commission and may be removed or destroyed by the contractor or agents of said Commission.

We are further advised by the Highway Commission that the free rental period inuring to said Humane Society by the terms of said deed of conveyance expired on December 9, 1952, but that the Division Engineer of the Missouri State Highway Commission has not given said Humane Society notice to remove such buildings, as required in said deed. We believe the question of the individual ownership of such buildings, whether they are owned now as personal property by the said Humane Society because of the provision in said deed authorizing the grantor to remove such buildings and thereby convert such buildings into personal property, or whether such buildings may become the property of the State of Missouri upon the abandonment of its right to remove such buildings by the said Humane Society, is not material in the solution of question number one. If such buildings were or may become the property of the Missouri State Highway Commission they would be exempt from taxation by the terms of Section 6, Article X of the present Constitution and Sub-section (1) of Section 137.100, RSMo 1949, because owned by the State. If, on the other hand, the said Humane Society is now the owner thereof, such property is still exempt from taxation under said Section 6 of Article X of the present Constitution of this State and Sub-section (6) of said Section 137.100, if said Humane Society holds such property not for private or corporate profit, and it is used for purposes purely charitable by said Society as a benevolent corporation. It is clear, we believe, that it is so held. Section 6 of Article X of our Constitution reads as follows:

> "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."

Sub-sections (1) and (6) of Section 137.100, RSMo 1949, exempting such property read, respectively, as follow:

> "The following subjects shall be exempt from taxation for state, county or local purposes:
>
> "(1) Lands and other property belonging to this state;
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> * * * * * * * * * * * * * * * * * * * * * *
>
> "(6) 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; * * *."

Section 352.010, RSMo 1949, provides that any number of persons not less than three, who shall have associated themselves by articles of agreement as a society formed for benevolent purposes may become a corporate society.

Section 352.020, RSMo 1949, provides that any association formed for benevolent purposes, including a purely charitable society, which tends to the public advantage may be created a body corporate and politic by complying with Sections 352.010 and 352.060.

Section 352.060, RSMo 1949, provides that the persons holding the offices, respectively, of president, secretary and treasurer of the association, by whatever name they may be known, shall submit to the Circuit Court having jurisdiction in the city or county where such association is located, the articles of agreement with the petition praying for a pro forma decree, and that the Court upon due proof, if satisfied of the lawfulness and public usefulness thereof, may grant said petition. This, we have observed, has all been consummated in the Circuit Court of Boone County, Missouri, whereby said Humane Society has been granted a pro forma decree of incorporation under the name of the Columbia Humane Society as a benevolent organization. Text-writers and the Courts frequently define "benevolent" as "charitable". 7 C.J. 1140, 1141, states its text on the point as follows:

Honorable Philip A. Grimes:

> "Since the context may qualify or restrict the ordinary meaning of the term 'benevolent,' the word is frequently used as synonymous with "charitable': * * *."

Our Kansas City Court of Appeals in the case of State ex rel. Hudson vs. Academy of Science, et al., 13 Mo. App. Rep., page 213, l.c. 216, defining a gift for "charity", said:

> "A gift designed to promote the public good by the encouragement of learning, science, and the useful arts, without any particular reference to the poor, and any gift for a beneficial public purpose not contrary to any declared policy of the law, is a charity. And, if such a gift is administered according to the intention of the donor, the property is used for charitable purposes. * * *."

The Columbia Humane Society incorporated as a benevolent society for the prevention of cruelty to animals we believe comes clearly within such definition and within the terms of Section 6, Article X of our Constitution as being exempt from taxation as a corporation existing not for corporate profit but for purposes purely charitable.

61 C.J. 506, respecting the status of societies for the prevention of cruelty to animals states the following text:

> "Societies for Prevention of Cruelty. Societies for the prevention of cruelty to children or animals may be exempt from tax under laws expressly relating thereto, or as charitable and benevolent institutions."

We find no Missouri case on this specific point but there are cases from other jurisdictions cited in support of the text in the footnotes to the text. One such case is Massachusetts Society for the Prevention of Cruelty to Animals vs. City of Boston, reported in 6 N.E. 840, decided by the Supreme Court of the State of Massachusetts. The facts recited in the decision reveal that the City of Boston assessed taxes against the plaintiff society on its real estate. The society paid such taxes under protest, instituted suit and recovered back such payment in the trial court. The society was incorporated under a statute, very similar to our said Section 352.010, permitting literary, benevolent, charitable and scientific institutions to be incorporated within that State. The Court said that the objects and purposes of the society were not more specifically defined than by its title, nor was any mode of accomplishing them pointed out. In the construction and discussion of the statutes involved, the

Court held that the "society" might be properly defined as both benevolent and charitable. The Court in affirming the judgment of the trial court in favor of the society as a benevolent and charitable institution, l.c. 841, 842, said:

> "Without discussing the question whether the word 'benevolent' is used substantially as synonymous with 'charitable,' or disjunctively, we are of opinion that the society also comes within the definition of a charity. There is no profit or pecuniary benefit in it for any of its members. Its work, in the education of mankind in the proper treatment of domestic animals, is instruction in one of the duties incumbent on us as human beings. Those are charitable societies whose objects are to bring mankind under the influence of humanity, education, and religion. * * *."

It is the belief of this office, answering your first question, that, under the facts existing here and under the authorities herein cited and quoted, including Section 6 of Article X of the present Constitution of this State and Section 137.100, RSMo 1949, the Columbia Humane Society is a society whose property is not held for private or corporate profit but is used exclusively for purposes purely charitable as a benevolent society for the prevention of cruelty to animals, and that its property of whatever description, real or personal, so used, is exempt from taxation by the terms of said Section 6, Article X of the Constitution and said Section 137.100, RSMo 1949.

Your second question is, whether certain individuals, who likewise have sold real estate located in Boone County, Missouri, to the Missouri State Highway Commission, and upon which were then, and are now, located certain buildings, are the owners of such buildings, as personal property, under the terms of a separate contract between such individuals, who are husband and wife, and the Highway Commission, and if such buildings as personalty are subject to taxation. The deed conveying such real estate to the State Highway Commission, dated December 9, 1948, reveals that Mr. Arthur T. Marriott and his wife, Mrs. Estella H. Marriott, are the grantors in the deed. The ownership by the grantors of such buildings separate from the land conveyed we believe is established in a separate contract between the said grantors in said deed and the State Highway Commission of Missouri, dated December 6, 1948, signed and acknowledged by the parties

before a Notary Public of Boone County, Missouri. We shall note and copy only such parts of said contract as in our view bear upon the question of the ownership of said buildings and their liability for taxation.

Clauses 4 and 5 on pages 3 and 4 of said contract refer to and identify said buildings as personal property severed from the land conveyed in said deed and mentioned in said contract and clearly state the intention, understanding and agreement of the parties that such buildings were to become, upon the execution of said deed, and did become, the absolute property of Mr. and Mrs. Marriott, named as grantors in the deed and "owners" in said contract. The said clauses 4 and 5 read, respectively, as follow:

> "(4) It is further agreed during the period of occupancy by the owners or their lessees owners shall pay the expense of all maintenance and repairs which said owners deem necessary, said owners further agree to keep said premises free from rubbish, filth, and junk and agree to maintain said premises so that they will have a neat appearance. It is further agreed that when said owners vacate said property they shall be permitted to remove their stock of goods, furniture, signs, and fixtures. And it is specifically agreed that after the expiration of the five-year period herein provided for and in the event the premises are not leased to the owners under the provisions of Paragraph (3) above but are leased to others by the Commission, the owners shall retain, have, and be vested with the following property rights in and to the buildings then located upon the premises, viz.: the right and option to reclaim said buildings and remove (at their own expense and without liability to the Commission for waste in so doing) upon sixty (60) day written notice from the Commission that it is necessary to utilize all of the premises for highway purposes and that said buildings must be removed within such sixty (60) days; and the failure, neglect, or refusal of the owners to remove said buildings at their own expense within such sixty (60) day period shall, ipso facto, operate as an abandonment, termination, relinquishment, and forfeiture of any and all of the owners' rights and property interests

> in and to said buildings, and the Commission shall then be vested with complete and unrestricted title to and ownership of said buildings and shall have the right to remove or destroy same without further liability to the owners.
>
> "(5) It is specifically understood and agreed by and between the owners and Commission that the owners have a specific and definite property right in and to said buildings which the Commission agrees may be insured by owners and agrees that if owners insure said building or buildings located on said premises against destruction of any kind that the insurance so procured by owners shall be written in the names of the owners, paid by the owners, and in the event of the loss the proceeds of said insurance shall be payable to the owners. In the event of a loss from the destruction as hereinabove contemplated, the owners will not be obligated to rebuild the buildings on said premises but may at their election retain the proceeds from the insurance on said buildings and are further entitled to retain the possession of the real estate for the balance of the five-year period for such use and purposes as the owners may see fit, subject to the exceptions and limitations hereinabove stated and in accordance with the other terms of this contract."

The grantors in said deed having executed said contract with the conditions, privileges, rights and obligations specified therein inuring to them, and being imposed upon them, such as the right to remove such buildings at the end of the five year period, the vesting in them the right, title and interest in said buildings so that they could effect and procure, as the owners thereof, insurance of any kind on said buildings in the names of the said grantors, with the absolute right to collect and receive the proceeds of any loss of such buildings under such insurance, and being relieved of the obligation to replace and rebuild said buildings on said real estate, if destroyed, cast upon and vest in said grantors the ownership of such buildings so that such grantors, the said named husband and wife, would be, and are,

estopped now to deny that they became the owners of such buildings as personal property, severed from such real estate at the time of the execution of said deed, and now are the absolute owners of the title thereto, and are liable as such owners to list such property with the County Assessor for taxation. The reference in clause (4) to the preceding clause (3) of said contract refers to the real estate conveyed in said deed and has no reference or relationship to said buildings whatever.

The authorities in every jurisdiction, so far as we have been able to observe, hold that the character of property may, on occasion, be changed from personalty to realty, or from realty to personalty by the acts, contracts and intentions expressed by the parties interested. 50 C.J., page 769, respecting the severance of buildings from real property, and their conversion into personal property, page 769, states the following text:

> "* * * The sale of a house and the materials in it with the understanding that they are to be removed constitutes a severance thereof from the land and converts them into personal property, and where buildings alone are conveyed by the owner of the land, they will, in contemplation of law, be regarded as divided and severed from the soil, and will vest as chattels in the grantee, even before actual severance. * * *."

In the case of Marshall vs. Moore, 146 Mo. App. Rep. 618, our St. Louis Court of Appeals, holding in effect that conditions and circumstances, as to whether a building is personalty or realty, depends upon the agreement and intention of the interested parties as expressed in their agreement, l.c. 620, said:

> "It is argued the judgment should be reversed because the action is to recover a building which was part of the realty. The petition avers it was personal property, and it might have been, for a building is not necessarily part of the realty. The one in question was on the right of way of the railroad company, and it ought to be presumed in support of the judgment and in the absence

> of proof to the contrary, it was put there pursuant to some agreement between the owner and the railway company, which left it the personal property of respondent. * * *."

A building erected on land of another with the agreement that it may be removed, remains personal property. Our Supreme Court in the case of Priestley vs. Johnson, 67 Mo. 632, so held where, l.c. 636, the Court said:

> "* * * When a building is erected by one upon the land of another with his consent, upon an agreement that it may be removed at the will of the builder, it does not become a part of the realty, but continues to be a personal chattel and the property of him who builds it. * * *."

The determination of its character as property, whether realty or personalty, when a building is erected on land with permission to remove it or when a building may be sold separately from the real estate, or when the real estate upon which a building is located is sold with the right of the seller to remove the same, all depends, we believe, upon the application of the same principle of law, that is, the purpose and intention of the parties as expressed in their contract or to be implied therefrom, that applies to contracts generally. The Missouri decisions relate to cases where buildings were erected upon land of another by a tenant or other person who had the right under an agreement with the owner of the land that the tenant could remove such buildings, or where buildings were sold separately without selling the real property and by actual severance became personal property, and like cases. The Courts of other States have rendered decisions holding that the conversion of buildings located on real estate into personal property may be effected at once by the mere agreement between the parties interested that upon the sale of the real property the seller or a third person may remove such buildings within a specified period of time, without actual severance. The Supreme Court of New York, in Schuchardt vs. Mayor of New York, et al., 53 N.Y. Rep. 202, made the following comment on the principle which, we believe, is applicable to the agreement between the parties here that, according to their intention, the grantors then remained, and now remain, the owners of the buildings

mentioned, because the contract gives them the right to remove the buildings, and which agreement constituted such buildings, at the time of the execution of the deed conveying the real estate to the State of Missouri, personalty, where the Court, l.c. 210, said:

> "* * * The law has engrafted a qualification upon the rule in case of erections made upon the land by a tenant for purposes of trade, and gives him in general a right to remove them during his term. So, also, the owner may reserve from a conveyance of the land the trees or buildings thereon, in which case they will in contemplation of law be regarded as divided and severed from the soil, and will vest as chattels in the grantor, even before actual severance. * * *."

Another New York case, similar both in fact and principle to the situation here, was decided by the Supreme Court of the State of New York in Hood, et al. vs. Whitwell, et al., 120 N.Y.S. 372. The facts recited in the opinion were that the State of New York, under provisions of its Barge Canal Act, acquired title and took possession of a building for canal purposes. The State thereafter entered into a contract with a company for the construction of the barge canal between two points. The construction contract provided: "'these buildings will become the property of the contractor, who may dispose of them as he sees fit, except that all parts shall be entirely removed before the completion of the work, together with their foundations and all accessories.' * * *." The buildings were to be removed from the land without cost to the State. The contractor sold the building in controversy in the case to one, Whitwell. After letting the barge canal contract to the contractor, the State changed the site of the canal to exclude therefrom the property upon which the building so sold by the contractor was located. Whereupon, the owner filed the action to prevent the person to whom the contractor had sold the building from removing the same from the land. The Supreme Court of that State in holding that under the contract the contractor became the owner of the building after the contract was let and could lawfully dispose of the building, l.c. 374, 375, the Court said:

> "But it is also argued that the buildings are real property belonging to the state

> and do not become the personal property of the contractor until they are actually removed from the site, and that the contractor has no right to dispose of them by sale or to transfer the right to remove them to the purchaser, but only the right to convert them into personalty by actual removal. The state became the owner of the land and buildings after the contract was let. The buildings 'to be removed' then became the property of the contractor according to the terms of the contract. The title and ownership of permanent erections generally follow the title of the land, but it is perfectly competent for parties by contract so to regulate their respective interests that one may be the owner of the buildings and another of the lands. * * *."

The New York Court of Appeals in the case of Melton, et al., vs. Realty Company, et al., reported 108 N.E., held that the ownership and rights of persons in land is one of contract and when fixed by the contract must be carried out as agreed upon. The Court in the case on this principle, l.c. 850, said:

> "* * * While the title and ownership of permanent erections by one person upon the lands of another as a general rule accrue to the holder of the title of the lands, nevertheless it is competent for parties by contract to so regulate their respective interests that one may be the owner of the buildings and another the owner of the lands. * * *."

Considering the facts and authorities hereinabove recited and submitted, it is clear, answering question two, that the said named grantors in said deed, husband and wife, are the owners of said buildings as personal property, separate from the land conveyed in said deed, and that said buildings are subject to taxation as personal property under the statutes of this State relating to taxation.

Honorable Philip A. Grimes:

CONCLUSION

It is, therefore, considering the foregoing, the opinion of this office:

1) That the Columbia Humane Society at Columbia, Missouri, is a charitable and benevolent society, incorporated by pro forma decree, and is the owner of certain buildings located on land in Boone County, Missouri, conveyed by deed of said society to the State Highway Commission of Missouri, but in said conveyance created personal property severed from said land; that said buildings are not held by said society for private or corporate profit but are used exclusively for purposes purely charitable and benevolent for the prevention of cruelty to animals, and that its said property is exempt from taxation in this State by the terms of Section 6, Article X of the Constitution of this State, 1945, and Section 137.100, RSMo 1949;

2). That on December 9, 1948, Mr. Arthur T. Marriott and his wife, Mrs. Estella H. Marriott, by the terms of a certain contract between said individuals and the Missouri State Highway Commission incident to the conveyance by them of certain real estate by deed, became the owners of certain buildings located on said land conveyed by said individuals by deed to said Missouri State Highway Commission, separate from the land conveyed in said deed as personal property; that said buildings are subject to taxation as personal property in Boone County, Missouri, under the statutes of this State relating to taxation.

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

Yours very truly,

JOHN M. DALTON
Attorney General

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