TAXATION
EXEMPTIONS: Real estate to be exempt from taxes on account of being used for religious worship or for purposes purely charitable must be used exclusively for religious worship or for purposes purely charitable.

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Hon. Lane B. Henderson
Prosecuting Attorney
Shelbina, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you submit the following statement and request:

> "The Me. Church South owns a residence building in Shelbina, Missouri, called the parsonage. The pastor for this circuit owns a residence home of his own in Monroe City, Missouri, and he is living in his own residence. He says, and I think it is true, that the parsonage on the circuit is furnished to the pastor and it is considered a part of the salary that he receives. In this case living in his own residence he rents the parsonage and collects the rent and keeps it as a part of his salary or income. He said that he had to keep the insurance on the property and whatever repairs were made on the building had to come out of the rent he collected.
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> "The Board of Equalization at the suggestion of the county assessor, placed this property on the assessor's books for taxation purposes. The pastor of the church insists that it is not subject to taxation. The assessor insists that it is subject to taxation because it is not being lived in by the pastor but is rented by him. I have read the opinion in 91 Mo. 671 and I would like to have your opinion on this question for the Board of Equalization."

If this property is exempt from taxation, it is by virtue of the provisions of Section 6 of Article 10 of the Constitution of Missouri and Section 10937 R. S. Mo., 1939. Said Section 6 provides in part as follows:

> "* * *Lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, may be exempted from taxation, when the same are used exclusively for religious worship, for schools, or for purposes purely charitable, * * *"

Said Section 10937 R. S. Mo., 1939, dontains language similar to the language quoted in Section 6, supra. In construing tax exemption provisions, the rule that such provisions must be given a strick but reasonable construction, is to be applied.

From the facts which you submit, it appears that the building in question is owned by a religious organization, that it is a parsonage, that it is not being lived in by the minister but that it is rented to private parties and the rent proceeds are applied to the salary of the minister.

It will be noted that the Constitution and statute, referred to above, exempts property from taxation, if it is used exclusively for religious worship or for purposes purely charitable.

In the case of Bishop's Residence Company v. Hudson, 91 Mo. 671, the court held exempt from taxation premises kept and maintained as a residence for the use and occupancy of the Bishops of the Me. Church South. This case differs from your question because the Bishop actually occupied and lived in the residence. In your case the building is not occupied by the minister but he receives the rentals, from the building, as a part of his salary.

This set of facts, we think, places this property in the same class as that was in the case of State ex rel. v. Y.M.C.A., 259 Mo. 233. The facts in that case were stated

at l.c. 235:

> "Defendant owns two buildings in the city of St. Louis, which are mainly used for the physical education and spiritual and social development of young men and boys. However, some of the rooms on the first floor of said buildings, aggregating about fifteen per cent of the floor space thereof, are rented for stores and other commercial purposes. The rentals received by defendants are used only to promote the religious and educational work of the defendant association. * * * *"

In speaking of the tax exemption clause in the Constitution and statutes, heretofore referred to, the court at l.c. 237 said:

> "* * * The ruling in the Fitterer case (157 Mo. 51) is a construction of our present Constitution and statute, and holds that a building owned by a Masonic lodge, on account of the charitable designs and practices of such lodge, is exempt from taxation, so long as it is used exclusively for such lodge purposes, but when two of the floors of such building are rented for commercial purposes then the entire building becomes subject to taxation. In deciding that case it was said: 'There is a very material difference between the "use of a building exclusively for purely charitable purposes," and renting it out, and then applying the proceeds arising therefrom to such purposes. To rent out a building is not to use it within the meaning of the statute, but in order to use it, it must be occupied or made use of. Moreover, by leasing the property the lodge becomes the competitor of all persons having property to rent for similar purposes, and the plain and obvious meaning of the statute is that such property shall not be exempt from taxation.'"

and at l.c. 238, the court further said:

> "Appellant's learned counsel cite cases from other jurisdictions where it has been held that only such per cent of a building owned by a religious corporation as is used for commercial purposes shall be subject to taxation, but we cannot bring ourselves to believe that any such intent was in the minds of the framers of our Constitution. Just what was in the minds of the framers of our Constitution, it is not necessary to ascertain. What they have said in regard to tax exemptions is so clear as to carry its own construction.
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> "However much we may sympathize with the exalted purposes of defendant, the words 'dominant use' or 'principal use' cannot be substituted for the words 'used exclusively' without doing violence to a document which we have sworn to support and uphold."

In speaking of the Y.M.C.A. opinion, supra, our Supreme Court in the case of Y.W.C.A. v. Baumann, 130 S. W. (2d) (1939) 499, 501 said:

> "* * * the proof showed that a portion of the Association's building was leased to others for commercial purposes. We denied exemption because the property itself was not used 'exclusively' for educational and religious purposes and further held that it was immaterial that the income from the property was so used.
> * * * *"

The facts in that case are quite similar to the facts here. If the minister lives in the building, sought to be exempted from taxation, then it is exempt because it is being used for religious worship or for purposes purely charitable. However, if it is rented and used as residence by persons other than the minister then it is used for commercial purposes and is not exclusively used for religious worship or for

purposes purely charitable even though the rentals go for those purposes.

CONCLUSION

Therefore, it is the opinion of this department that since the parsonage is not being occupied by the minister or used for religious worship or for purposes purely charitable, then under the authority, hereinbefore referred to, it would not be exempt from taxation.

Respectfully submitted,

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APPROVED:

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