

TAXATION AND REVENUE: Right to exemption from taxation property belonging to German Saint Association.

January 13, 1946



Honorable George L. Stearns
City Counselor
St. Louis, Missouri

Attention: Charles J. Dolan, Associate City Counselor

Dear Sir:

Reference is made to your letter requesting an official opinion of this office, reading, in part, as follows:

"Sometime ago this office rendered an opinion to the Assessor regarding a claim for exemption from taxes presented to the Assessor on behalf of the German St. Vincent Orphan Association. The attorney for the Association, Mr. E. V. P. Schneiderhahn, disputes the correctness of our ruling, basing his contention on an opinion rendered in the same case by Assistant Attorney General Crowder, dated July 23, 1925.

"The question submitted relates exclusively to the exemption claimed on behalf of the property referred to in Mr. Hoehn's letter of April 27, 1945. We would appreciate hearing from you at your convenience with regard to the foregoing question."

The letter received by your office from Mr. Hoehn under date of April 27, 1945, and referred to in your letter of inquiry, reads, in part, as follows:

"The German St. Vincent's Orphan Association acquired vacant property located in City Block 4414-W Lots 52 and 53 on March 15th, 1944 by Special Warranty deed from Viola Crowe dated February 14th, 1944 and recorded March 15, 1944, Daily No. 89.

"Said association claims that under their charter this property is exempt from taxation. See Laws of 1851, page 457."

May we say that we have reviewed the opinion of the Office of the Attorney General of Missouri dated July 24, 1925, directed to the Honorable Oliver Senti, City Counselor, St. Louis, Missouri, and written by the Honorable George W. Crowder, Assistant Attorney General. We concur in the conclusion expressed therein, but inasmuch as the opinion does not consider certain other contentions which may be urged against the granting of the tax exemption, we believe it well to prepare a more exhaustive one.

The German Saint Vincent Association was chartered by a special act of the General Assembly, found Laws 1851, at page 457. The relevant portions thereof provide as follows:

"Sec. 1. Frederick Joseph Heitkamp, Bernan Degenhart, Joseph Degenhart, Frederick Hietkamp, John Frederick Mantel and Francis Beehler, their associates and successors, be and they are hereby ordained, constituted and declared to be, a body corporate and politic, by the name and style of 'The German Saint Vincent Association,' and by that name they may have continual succession, and shall be capable of suing and being sued, pleading and being impleaded, answering and being answered unto, defending and being defended in all courts and places whatsoever; shall have and enjoy, all necessary powers as an incorporated company, to procure by subscription, purchase, bequest or otherwise, real estate for the purposes of the association and not otherwise, and to hold the same free from all taxes in their corporate capacity; to rent, lease, sell, or otherwise dispose of the same, as the said association may deem proper, always saving and protecting private rights; to hold and enjoy in their corporate capacity, all the property, real, personal or mixed, which they now have, or hereafter may acquire, with the proviso, that the same be applicable solely to the objects and purposes, of the association; that they, and their successors may have a common seal, and may change, alter or break the same at their pleasure." (Emphasis ours.)

"Sec. 4. The corporation hereby created shall continue so long as it shall faithfully, and beneficially fulfill the objects of its creation, but the general assembly may alter or repeal this act whenever the association,

has failed to accomplish its object, or violated its charter."

During the period in Missouri history at which this charter was granted, many others of similar nature were granted creating corporations for educational and charitable purposes, and in some instances corporations organized for private gain. Most of such charters included tax exemption clauses substantially the same as the one found in the charter of The German Saint Vincent Association. The construction of these various tax exemption grants has resulted in considerable litigation. Under the provisions of the Constitutions of 1865, 1875 and 1945, the General Assembly has been deprived of its authority to grant to either individuals or corporations exemption from taxes, but this prohibition did not exist under the provisions of the Constitution of 1820, and the right of the General Assembly to make such grants prior to adoption of the Constitution of 1865 is unquestioned.

Reviewing the earlier cases involving the construction of tax exemption clauses contained in the charters of similar corporations, we note *Washington University v. Rowse*, 42 Mo. 508, and *Home of the Friendless v. Rowse*, 42 Mo. 361. These cases were parallel throughout their histories in both the state and federal courts, and for that reason are now being considered together, the only real distinction between the two corporations being that Washington University was chartered for educational purposes, whereas the Home of the Friendless was chartered for charitable purposes. Both charters included tax exemption clauses similar to that of the German Saint Vincent Association, and in order that this similarity may be noted, we quote a portion of the charters of the respective corporations mentioned.

The Washington University charter, found Adj. Sess. Acts 1853, page 290, provided as follows:

"1. Christopher Rhodes," etc., "and their associates and successors, are hereby constituted a body corporate and politic, by the name of The Eliot Seminary, and by that name shall have perpetual succession, and be capable of taking and holding, by gift, grant, devise, or otherwise, and conveying, leasing, and otherwise disposing of, any estate, real, personal, or mixed, annuities, endowments, franchises, and other hereditaments which may conduce to the support of said seminary or to the promotion of its objects. All property of said corporation shall be exempt from taxation; and the sixth, seventh, and eighth sections of the first article of the act concerning corpo-

rations, approved March 19, 1845, shall not apply to this corporation. * * *

In the Home of the Friendless charter, approved February 3, 1853, the first section contains the following:

"All property of said Corporation shall be exempt from taxation; and the 6th, 7th and 8th sections of the 1st article of the Act Concerning Corporations, approved March 19, 1845, shall not apply to this Corporation."
(Emphasis ours.)

It becomes immediately apparent that the tax exemptions granted both Washington University and the Home of the Friendless are substantially the same as that of the German Saint Vincent Association.

Suit was commenced by both Washington University and the Home of the Friendless seeking to enjoin the collection of taxes on property owned by them. Such taxes purportedly had been assessed and levied in accordance with authorization to do so granted by a general act of the General Assembly passed subsequent to the adoption of the Constitution of 1865. Judgments of the circuit court enjoining the collection of the taxes were reversed by the Supreme Court of Missouri, the court writing a complete opinion in the Washington University case, and deciding the Home of the Friendless case on the same principles but without opinion.

Thereupon, both cases were taken on writ of error to the Supreme Court of the United States. Jurisdiction had been placed for such action in the Supreme Court of the United States by reason of the injection of a federal constitutional question. Such question arose from the claims of the respective corporations that to permit the imposition of the taxes would result in the impairment of the obligations of an existing valid contract between the State of Missouri and each of such corporations whereby they were relieved from payment of taxes; thereby contravening the provisions of the Federal Constitution.

In the Supreme Court of the United States, the more exhaustive opinion was delivered in the Home of the Friendless case, the Washington University case being decided with but a very short opinion, the court saying no material difference existed in the two cases.

In each instance, the decision of the Supreme Court of Missouri was reversed and the cause ordered remanded to the lower court for disposition. We quote from Home of the Friendless v. Rowse, 75 U. S. (8 Wall.) 430, 19 L. Ed. 495:

"This is a writ of error to the Supreme Court of the State of Missouri. It appears that the plaintiff in error, a Corporation created by the Legislature of Missouri, commenced a suit on the equity side of the Circuit Court of St. Louis County, to restrain the defendant, who was Collector of the Revenue for the County, from collecting the taxes on two parcels of real estate of which it was the owner at the time of the assessment, on the ground that the taxes were illegally assessed, because all its property by its Act of Incorporation, was expressly exempted from taxation at all times. The defendant interposed a demurrer, which was overruled and the judgment on the demurrer made final. The cause was removed to the Supreme Court of the State, and resulted in the reversal of the judgment of the lower court and the dismissal of the bill of petition.

" * * * The important question raised by the record is: whether the State of Missouri contracted with the plaintiff in error not to tax its property. If he did so contract, it is undisputed that the assumed legislation, under the authority of which the property in controversy was taxed, impaired the obligation of this contract.

"The object for which the Home of the Friendless was incorporated was to enable those persons of the female sex, who were desirous of establishing a charitable institution in St. Louis for the relief of destitute and suffering females, to carry out their laudable undertaking.

* * * * *

"It is objected that there is no consideration stated in the Act for the release from taxation, which is claimed is necessary in

order to uphold the contract. But this is a mistaken view of the law on this subject.

"There is no necessity of looking for the consideration for a legislative contract outside of the objects for which the corporation was created. These objects were deemed by the Legislature to be beneficial to the community, and this benefit constitutes the consideration for the contract, and no other is required to support it. This has been the well settled doctrine of this court on this subject since the case of *Dartmouth College v. Woodward*, 4 Wheat. 519.

"It is contended that the rules of construction applicable to legislative contracts are more stringent than those which are applied to contracts between natural persons, and that, applying these rules to this contract, it cannot be sustained as a perpetual exemption from taxation.

"It is true that legislative contracts are to be construed most favorable to the State if on a fair consideration to be given the charter, any reasonable doubts arise as to their proper interpretation; but, as every contract is to be construed to accomplish the intention of the parties to it, if there is no ambiguity about it, and this intention clearly appears on reading the instrument, it is as much the duty of the court to uphold and sustain it, as if it were a contract between private persons. Testing the contract in question by these rules, there does not seem to be any rational doubt about its true meaning. 'All property of said corporation shall be exempt from taxation,' are the words used in the Act of Incorporation, and there is no need of supplying any words to ascertain the legislative intention. To add the word 'forever' after the word 'taxation' could not make the meaning any clearer. It was, undoubtedly, the purpose of the Legislature to grant to the Corporation a valuable franchise, and it is easy to see that the franchise would be comparatively of little value if the Legislature, without taking direct action on the subject, could, at its will, resume the power of taxation. * * * *

"The validity of this contract is questioned at the bar on the ground that the Legislature had no authority to grant away the power of taxation. The answer to this position is, that the question is no longer open for argument here, for it is settled by the repeated adjudications of this court, that the State may, by contract based on a consideration, exempt the property of an individual or corporation from taxation, either for a specified period, or permanently. And it is equally well settled that the exemption is presumed to be on sufficient consideration, and binds the State if the charter containing it is accepted. *New Jersey v. Wilson*, 7 Cranch, 164; * * * *

"It is proper to say that the present Constitution of Missouri prohibits the Legislature from entering into a contract which exempts the property of an individual or corporation from taxation; but when the charter in question was passed there was no constitutional restraint on the action of the Legislature in this regard.

"Without pursuing the subject further, we are of the opinion that the State of Missouri did make a contract on sufficient consideration with the Home of the Friendless, to exempt the property of the Corporation from taxation, and that the attempt made on behalf of the State through its authorized agent, notwithstanding this agreement, to compel it to pay taxes, is an indirect mode of impairing the obligation of the contract, and cannot be allowed.

"The judgment of the Supreme Court of Missouri reversed, and the cause remanded to that court below, with directions to proceed in conformity with this opinion."

It therefrom appears that the granting of the charter by the General Assembly and its acceptance by the corporation did create a contract between the State of Missouri and the corporation, under the provisions of which perpetual exemption from taxation was granted. It further appears that no action taken by subsequent General Assemblies could impair the obligations

of such contract. We believe that the German Saint Vincent Association was placed in the same position by virtue of the charter granted it and the acceptance of such charter by the corporation.

Again, after the adoption of the Constitution of 1875, an effort was made to subject the property of Washington University to taxation on the theory that the adoption of such constitution destroyed the prior immunity of such corporation from exemption. On appeal to the Supreme Court of Missouri, in *Washington University v. Baumann*, 108 S. W. (2d) 403, 1. c. 412, the court held:

"In the instant case the University has a contractual charter with the state, and that contract under the decision of the United States Supreme Court in the Washington University Case cannot be impaired by subsequent legislation. It stands superior not only to our present taxing law but even to our Constitution, in so far as they purport to destroy the University's privileges and immunities thereunder, relied on for years by it and at least some of its benefactors, as the evidence shows. To do so would be to commit fraud. * * *"

The doctrine declared in the last cited case was reaffirmed in *Washington University v. Gorman*, 153 S. W. (2d) 35, 1. c. 39, wherein the court quoted that portion of the opinion in *Washington University v. Baumann*, set out above, and reaffirmed it as being the controlling principle to be applied to the case then under consideration.

From the foregoing, we are persuaded to the view that the tax exemption granted the German Saint Vincent Association is such as to permit it to occupy the same status with respect to exemption from taxation of its real property as that occupied by Washington University and the Home of the Friendless. We can see no material difference between a tax exemption providing that the association may acquire real estate and "hold the same free from all taxes" and the Washington University exemption, "all property of said corporation shall be exempt from taxation," and the Home of the Friendless exemption, "all property of said corporation shall be exempt from taxation," except that such tax exemption with respect to the German Saint Vincent Association is limited to real property and would not be extended to include property of other nature.

However, our principal reason for preparing this opinion is to give some consideration to another phase of the matter which has not been mentioned in any of the correspondence or previous opinions relative thereto. We refer particularly to the General Corporation Act of 1845, found Revised Statutes of Missouri, 1845, page 323, Chap. 34, Art. 1.

It will be noted that in both the charter of the Washington University and of the Home of the Friendless specific reference was made to this General Corporation Act and both charters were specifically withdrawn from the operation of its provisions. It may now be argued that inasmuch as similar provisions are not contained in the charter of the German Saint Vincent Association, a different doctrine should prevail in determining its present right to such tax exemption.

However, we believe that such contention could not be sustained. We direct your attention to Trustees of William Jewell College of Liberty v. Beavers, 171 S. W. (2d) 604, 1. c. 609:

"Defendant's motion for rehearing, as did its brief en Banc (also brief of amicus curiae), stresses the provision of the general corporation laws of 1845 (R.S. 1845, p. 232, Ch. 34, Art. 1, Sec. 7) making charters 'subject to alteration, suspension, and repeal, in the discretion of the legislature.' *Ston Hall College v. South Orange*, 242 U. S. 100, 37 S. Ct. 54, 61 L. Ed. 170, and *City of Covington v. Kentucky*, 173 U. S. 231, 19 S. Ct. 383, 43 L. Ed. 679, are cases cited as authority for the proposition that this statute became a part of the plaintiff's charter and contract, and was a reservation of the right to repeal its tax exemption. Citing also Missouri cases: *Watson Seminary v. Pike County Court*, 149 Mo. 57, 50 S. W. 380, 45 L.R.A. 675; *Gregg v. Granby Mining & Smelting Co.*, 164 Mo. 616, 65 S. W. 312.

* * * * *

"However, even this contention would not change the result we have reached. Defendant assumes that this tax exemption was repealed by the adoption of the Constitutions of 1865 and 1875. However, this court held in *Scotland County v. Missouri*, Iowa &

Nebraska Ry. Co., 65 Mo. 123, that the provision of the 1865 Constitution prohibiting tax exemptions (Sec. 16, Art. 11) 'was evidently designed to be prospective and not retrospective in its operation, and it would be an unjust imputation on the convention which framed that Constitution to infer that they designed that section to operate upon existing rights.' This ruling was approved and followed in State ex rel. Dosenbach v. St. Joseph's Convent of Mercy, 116 Mo. 575, 22 S. W. 811.

"In the Convent of Mercy case, this court held that the same thing was also true of the provisions of the Constitution of 1875, saying:

"We are unable to see why the constitution of 1875 should receive, as to these sections, a different construction from that of 1865. As to prospective legislation, they are both clear and specific, but in neither do we discover any intention that they should act retrospectively. * * *

"It would be violative of this almost universal canon of construction to hold that these general affirmative provisions should have a retroactive effect, and that they repeal this exemption, under the general language of the constitution in the section quoted.'

"This ruling as to the effect of the provisions of both Constitutions was again approved and followed in State ex rel. Morris v. Board of Trustees of Westminster College, 175 Mo. 52, 74 S. W. 990. Furthermore, as we pointed out in the Divisional opinion, the Constitution of 1875 provided what is in effect a savings clause, Sec. 1, Art. 12, Mo. R.S.A., to preserve 'existing charters, or grants of special or exclusive privileges,' when at the time of its adoption 'the corporation was organized and the contemplated charter powers exercised.' Therefore, whatever may be the power of the state to repeal plaintiff's tax exemption under the reserva-

tion in the general corporation law of 1848, it did not do so by adopting the Constitutions of 1865 and 1875, or by general statutes enacted for the purpose of carrying out the provisions of those Constitutions."

We believe that similar reasoning would prevail with respect to the charter of the German Saint Vincent Association inasmuch as it was created by a special act of the General Assembly, as pointed out heretofore.

It might be further contended that inasmuch as the real property is perhaps not being directly used for the purposes of the association, it has become subject to taxation. We do not believe that determination of such a condition lies within the jurisdiction or authority of local taxing officers, as it is a matter which could only affect the right to continue corporate existence of the association and could only be raised by the State in a direct action seeking the dissolution of the corporation. We quote from *Washington University v. Baumann*, 108 U. S. (24) 403, l. c. 409:

"Considered with its context, the statement in the opinion that it was not to be presumed the corporation would ever act in such a manner as to jeopardize its corporate rights, plainly implies the University's property will remain free from taxation so long as it commits no act *ultra vires* by the acquisition, holding, or use of property for some purpose other than the support of the educational establishments for which it was organized. This was more directly held in a similar tax exemption case, *St. Anna's Asylum v. New Orleans*, 105 U. S. 362, 365, 366, 26 L. Ed. 1128, where the same court said: 'Undoubtedly, if the corporation should acquire property not needed or used for carrying on the institution, it would be an act outside of the objects and purposes of the charter, and ultra vires.' And if a determination of that question be prerequisite to an ascertainment of the corporation's liability for taxes, the general rule is that it can be raised only by the state in a direct proceeding for that purpose. 51 C. J. sec. 8, p. 315, sec. 18, p. 322; *Blair v.*

Chicago, 201 U. S. 400, 450, 451, 26 S. Ct. 427, 50 L. Ed. 601; Pittsburgh, A. & M. R. Co. v. Stowe Twp., 252 Pa. 149, 161, 97 A. 197, 201; Kavanaugh v. St. Louis, 220 Mo. 496, 518, 119 S. W. 552, 558; State ex rel. Donnell v. Foster, 225 Mo. 171, 192, 193, 125 S. W. 184, 189; Estel v. Midgard Inv. Co. (Mo. App.) 46 S. W. (2d) 193, 195 (c)."

CONCLUSION

In the premises, we are of the opinion that the real property of the German Saint Vincent Association is exempt from the general taxing statutes under the provisions of its charter.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General

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