TAXATION AND REVENUE: Real property owned by religious organization not exempt from taxation when not used exclusively for religious purposes.

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Honorable William S. Thompson
Prosecuting Attorney
Mercer County
Princeton, Missouri

Dear Sir:

Reference is made to your letter of recent date, requesting an official opinion of this office, and reading as follows:

> "Will you please give me your opinion as to whether or not certain church property hereinafter described is subject to assessment for taxation purposes.
>
> "The facts are as follows: the Methodist Church of Mercer, Missouri, disbanded their organization as such some years ago. At that time the Church owned the church building and a parsonage. Later the church building was sold and the parsonage was rented and the rent money for the parsonage was turned over to the Epworth Church, which is a Methodist Church out in the country from Mercer. Five years back taxes are now due on the parsonage and the parsonage is advertised to sell for taxes.
>
> "In your opinion would this sale of the parsonage for taxes be a legal sale?"

Although you have not specifically so stated it to be a fact, we have in this opinion assumed that all of the assessments upon which the taxes have been levied and which are now delinquent were made subsequent to the time the parsonage was converted to income-producing rental property. We have also assumed that there is no question as to the regularity of the assessments and the publication of notice of sale, and that

all statutory requisites have been met by the various officials and other taxing authorities.

Section 6 of Article X of the Constitution of 1875 read as follows:

> "The property, real and personal, of the State, counties and other municipal corporations, and cemeteries, shall be exempt from taxation. 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, also, such property, real or personal, as may be used exclusively for agricultural or horticultural societies: Provided, that such exemptions shall be only by general law." (Emphasis ours.)

Pursuant to the constitutional authority embodied in the provision quoted, Section 10937, R. S. Mo. 1939, was in effect during the period of time involved in the assessments now under consideration. This section reads, in part, as follows:

> "The following subjects are exempt from taxation: * * * sixth, 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, when the same are used exclusively for religious worhip, * * * shall be exempted from taxation for state, county or local purposes." (Emphasis ours.)

The question, then, is whether or not the conversion of the parsonage to income-producing rental property had the effect of destroying the exclusive use of such property for religious purposes. If this action had such effect, then, in accordance with the terms of the exempting constitutional and statutory provisions, the exemption no longer extended to such property.

We believe that the opinion in State ex rel. v. Y.M.C.A., 259 Mo. 233, is decisive of the instant matter. The St. Louis Y.M.C.A. was a religious and educational association. In such capacity it owned certain real property located in the City of St. Louis, of which some fifteen per cent of the total area had been converted to income-producing rental property. The contention was made by the religious and educational organization that, in view of the fact that such income as was produced under the rental agreement was used exclusively for the purposes of the organization, its real property had not lost its exemption from taxation. A decree of the circuit court had upheld the right of the state and city to levy and collect general real estate taxes upon the real property in the circumstances outlined, and the Y.M.C.A. had appealed.

In affirming the decree of the circuit court and holding that the property was subject to taxation, the court said, l. c. 237:

> "Two of the cases cited by respondent (Taylor v. Labeaume, 17 Mo. 338; and Fitterer v. Crawford, 157 Mo. 51) furnish very strong support for the decree of the circuit court. 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.'"

While there are no other Missouri cases which we have been able to find which have decided the precise point with respect to the real property of religious organizations which has been converted to income-producing rental property, yet there are a great many construing similar exemption provisions relative to educational and charitable organizations. In this regard, your attention is directed to Y. W. C. A. v. Baumann, 130 S. W. (2d) 499, and cases cited therein. In each of these cases a similar conclusion was reached to that arrived at in the Y.M.C.A. case from which the excerpt is cited supra.

The last expression of the Supreme Court of Missouri is found in Evangelical Lutheran Synod, etc. v. Hoehn, 196 S. W. (2d) 134 (not yet reported in State Reports), l. c. 143:

> "The prerequisites to tax exemption were: (1) the use of the land itself, not merely its usufruct, for those exclusive purposes; (2) the owner must be dedicated to those purposes. To that extent the ownership characterized the use. If the first were not true, a proper religious or charitable institution could have claimed tax exemption if, for instance, its real estate was merely rented out and the rentals devoted to its objectives--which is not the law. * * *" (Emphasis ours.)

## CONCLUSION

In the premises, we are of the conclusion that real property owned by a religious organization which is converted to income-producing rental property is no longer used exclusively for religious purposes, even though the income derived therefrom is devoted to such purposes, and that thereby such real property loses its exemption from taxation.

We are further of the opinion that, upon compliance with the proper statutory requisites relative to assessment, levying of tax, publication of notice, etc., such real property

may be sold to enforce the lien of the state for such taxes so assessed and levied.

Respectfully submitted,

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APPROVED:

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