HOTEL
BOARD OF HEALTH: Y.M.C.A. of St. Louis required to pay hotel license fees.

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May 6, 1946

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R. M. James, M. D.
State Health Commissioner
Jefferson City, Missouri

Attention: Mr. Warren E. Lofton, Supervisor
Division of Food & Drugs

Dear Sir:

We are in receipt of your request for our official opinion in which you present the following questions:

> May the Young Men's Christian Association of St. Louis and St. Louis County be considered a hotel, within the meaning of Section 9931, R. S. Mo. 1939?
>
> If its buildings may be considered hotels, is the Young Men's Christian Association exempt from the payment of the license fees provided by the State Hotel Inspection Law?

Attached to your letter is correspondence from the Business Secretary of the Young Men's Christian Association in St. Louis, stating that while the organization has no objection to the payment of the required fee, or the inspections made thereunder, yet there was an objection to the designation of their buildings as hotels, as defined in the Hotel Inspection Law. The correspondence also states, "our room and dormitory facilities, which are available on a membership basis and in some instances to poverty-stricken or otherwise under-privileged persons, are provided and function purely as an incident to the religious, charitable and educational purposes of the Y.M.C.A."

These facts, together with those which will be pointed out later as appearing in cases previously determined by the

Supreme Court of Missouri, form the basis for determination of whether such activities come within the Hotel Inspection Act, Article 6, Chapter 58, R. S. Mo. 1939.

Section 9931 of said Article provides:

> "That every building or other structure, kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests, in which ten or more rooms are furnished for the accommodation of such guests, whether with or without meals, shall for the purpose of this article be deemed a hotel, and upon proper application the food and drug commissioner shall issue to such above described business a license to conduct a hotel: Provided, that it shall be unlawful for the owner of any such building or other structure to lease or let the same to be used as a hotel until the same has been inspected and approved by the food and drug commissioner." (Emphasis ours.)

In State ex rel. St. Louis Young Men's Christian Ass'n. v. Gehner, 11 S. W. (2d) 30, which was a proceeding to quash certain assessments against real estate in St. Louis owned by the St. Louis Young Men's Christian Association, an agreed statement of facts discloses the extent of the use of the Y.M.C.A. buildings by both members and nonmembers of the association. From these facts it appears that there are several hundred rooms in such use. In consideration of the question before it, the court stated, l. c. 37-38:

> "The by-laws of relator provide that full membership in the association is required before one may rent a room. Yet the record discloses that this by-law has been ignored, for relator has rented its rooms to men from other cities, other states, and other countries, who may well be termed transients in St. Louis, some of whom paid, but others showed no disposition whatever to pay. * * * True, some of the occupants of the rooms claimed they were unable to pay, and did not pay, and doubtless never will pay, yet there was an obligation to pay, and relator accepted of pay when offered by these parties, some of whom were nonresidents of the state. Relator in each

> building has helped many persons, many of them worthy; but such commendable acts do not authorize us to attempt to change either the statute or Constitution for the benefit of relator. The furnishing of meals and rooms free of charge may well be termed charity; but the renting of those rooms to persons not members of relator, the furnishing of meals to persons not members of relator, and the operation of a barber shop, tailor shop, and soda fountain for all those who cared to patronize them, are business enterprises; * * * " (Emphasis ours.)

The Supreme Court, at a later date, in St. Louis Young Men's Christian Ass'n. v. Gehner, 47 S. W. (2d) 776, even more specifically determined the question at hand. After setting out a description of the three large buildings occupied by the Young Men's Christian Association in St. Louis, in which the court pointed out that there existed accommodations for approximately 740 persons, the court stated, l. c. 778:

> "It is clear from the record that plaintiff is, in effect, conducting hotels or boarding houses. * * * "

As we read Section 9931, supra, it is sufficient if a building be kept, used or maintained for the accommodation of transient or permanent guests, with a total of ten rooms or more, whether advertisement is made of that fact or not.

It is apparent, therefore, that in answer to your first question, the Young Men's Christian Association, which is maintaining or keeping a building of more than ten rooms for transient or permanent guests, is operating a hotel, within the meaning of the Hotel Inspection Law.

With reference to your second question, it is necessary to consider the following constitutional provision and statute.

Section 6, Article X, of the 1945 Constitution provides as follows:

> "All property, real and personal, of the state, counties and other political subdivisions, and non-profit cemeteries, shall be exempt from taxation; and all property, real and personal, not held for private or cor-

> porate 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." (Emphasis ours.)

In pursuance to the commission granted by this section, the General Assembly has enacted House Committee Substitute for House Bill No. 471. In Section 5 of this Act we find the following exemption, which applies to institutions such as those mentioned supra:

> "The following subjects shall be exempt from taxation for state, county or local purposes: * * * Sixth, <u>all property, real and personal</u> 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." (Emphasis ours.)

Both the constitutional provision and the Act mentioned above exempt only <u>property, real and personal</u>, of exclusively religious and purely charitable organizations from taxation. It is unnecessary for us to decide whether the Young Men's Christian Association is an exclusively religious or purely charitable organization since, as is later pointed out, a license fee is not a <u>property</u> tax.

Section 9933, R. S. Mo. 1939, provides as follows:

> "The fee for licenses to conduct a hotel in this state shall be three ($3.00) dollars, except hotels containing fifteen rooms and less than twenty for the accommodation of guests, the license fee shall be five ($5.00) dollars, and hotels containing twenty rooms and less

> than thirty for the accommodation of guests the license fee shall be ten ($10.00) dollars, and hotels containing thirty rooms and less than forty for the accommodation of guests the license fee shall be fifteen ($15.00) dollars, and hotels containing forty rooms and less than fifty for the accommodation of guests the license fee shall be twenty ($20.00) dollars, and hotels containing fifty rooms and less than seventy-five for the accommodation of guests the license fee shall be twenty-five ($25.00) dollars, and hotels containing seventy-five rooms and less than one hundred for the accommodation of guests the license fee shall be thirty ($30.00) dollars, and hotels containing one hundred rooms and less than two hundred for the accommodation of guests the license fee shall be thirty-five ($35.00) dollars, and hotels containing two hundred rooms and less than three hundred for the accommodation of guests the license fee shall be forty ($40.00) dollars, and hotels containing three hundred rooms and less than four hundred for the accommodation of guests the license fee shall be forty-five ($45.00) dollars, and hotels containing four hundred rooms and more for the accommodation of guests the license fee shall be fifty ($50.00) dollars; which shall be paid to the food and drug commissioner before said license is issued, and said license shall be kept in the office of said place in a conspicuous manner, properly framed. Said license may be revoked by the commissioner at any time when the law or regulations are not being complied with."

As pointed out in State ex rel. St. Louis Young Men's Christian Association v. Gehner, supra, the renting of rooms is a "business enterprise," and a tax on such an enterprise would apparently not be a "property tax."

State ex rel. Missouri Portland Cement Co. v. Smith, 338 Mo. 409, a decision by the Missouri Supreme Court, points out the various classes of taxes and the application of the exemptions set out in Section 6 of Article X of the Constitution, supra, to such taxes. We find the following in the court's decision, l. c. 413-414:

> " * * * It has been said that taxes fall naturally into three classes, namely, capitation or poll taxes, taxes on property, and excises. 'Excises, in their original sense, were something cut off from the price paid on a sale of goods, as a contribution to the support of government. The word however has come to have a broader meaning and includes every form of taxation which is not a burden laid directly upon persons or property; in other words, excises include every form of charge imposed by public authority for the purpose of raising revenue upon the performance of an act, the enjoyment of a privilege, or the engaging in an occupation.' * * * * It will be observed that the exemptions granted by the Constitution and the statute, supra, are limited by express terms to the real and personal property of the several bodies mentioned. Accordingly, Article X, Section 6 of the Constitution has been held to have no application to collateral inheritance taxes (State ex rel. v. Henderson, 160 Mo. 190, 60 S. W. 1095), nor to license fees (State v. Distilling Co., 236 Mo. 219, 139 S. W. 455). And we think in this instance the statute does not impinge upon the constitutional provision pointed out, nor violate the statute relied on, and is valid." (Emphasis ours.)

Since Section 9953, supra, specifically provides a "license fee," it obviously is not affected by the constitutional provision or House Committee Substitute for House Bill No. 471, mentioned above.

In Salvation Army v. Hoehn et al., 188 S. W. (2d) 826, the Missouri Supreme Court again points out the manner in which the Young Men's Christian Association conducts its enterprises, and refers to the cafeteria service and the transient rates charged to those occupying rooms for less than a week as indicative of services of a commercial nature. A contrast is made with the services performed by the Salvation Army. The case has no application to the question of an exemption for a license fee, but is mentioned because it confirms the views of the Supreme Court as to the facts set out in the case of State ex rel. v. Gehner, supra.

A reference to decisions in other states reflects decisions in harmony with State ex rel. Missouri Portland Cement Co. v. Smith, supra. In Kentucky, where the constitutional provision exempts charitable institutions themselves, rather than their real or personal property, the Kentucky Court of Appeals held that such exemption did not apply to a regulatory fee charged for the doing of certain business or for the supervision of vehicles on the highways. In that case, Gray v. Methodist Episcopal Church, South, Widows and Orphans Home, 114 S. W. (2d) 1141, the Home claimed an exemption from the payment of the fee for registration of a motor vehicle under the laws of Kentucky. In denying this claim, the court stated, l. c. 1144-1145:

> "The principle enunciated in the foregoing cases is well stated in 26 R.C.L. p. 17, section 4, as follows: 'Some governments derive considerable revenue from a judicious exercise of the power of regulation; but since a tax is a charge imposed for the purpose of raising revenue, a charge primarily imposed for the purpose of regulation is not a tax, and is not subject to the constitutional limitations upon the power of taxation. * * * If the primary purpose of the legislature in imposing such a charge is to regulate the occupation or the act, the charge is not a tax even if it produces revenue for the public.' See, also, Chaddock v. Day, 75 Mich. 527, 42 N.W. 977, 4 L.R.A. 809, 13 Am. St. Rep. 468.
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> "As bearing somewhat on the question at issue, it might be pointed out that we have held that public institutions and public charities are not exempted from the payment of special assessments (street improvements), although their exaction, followed by a failure to pay, creates a lien on the real property. In the case of City of Mt. Sterling v. Montgomery County, 162 Ky. 637, 153 S. W. 952, 953, 44 L.R.A. N.S., 57, in discussing this question, and with direct reference to section 170 of the Constitution, we said: 'This constitutional and statutory exemption from taxation only refers to general ad valorem or property taxes that may be levied by the state, city, county, or taxing district under authority of law.'
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> "We, therefore, declare the rights of the parties to this controversy to be: The appellant should register the car of appellee upon the payment of the fee for such registration in the effect when it is sought to obtain a certificate, upon appellee's showing title, and in other respects complying with the motor vehicle registration law then in effect. * * * "

CONCLUSION

In view of the above authorities, it is our conclusion that the exemption from taxation set out in Section 6, Article X, of the Missouri Constitution of 1945, and in House Committee Substitute for House Bill No. 471, does not exempt the Young Men's Christian Association of St. Louis from the payment of the hotel license fees required by Section 9933, R. S. Mo. 1939.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General

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