

TAXATION: Property not presently used for charitable or religious purposes not entitled to exemption from taxation.

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Mr. Robert P. C. Wilson, III
Prosecuting Attorney
Platte City, Missouri

Dear Mr. Wilson:

We have received your request for an opinion of this department, which request is as follows:

"Enclosed find certified copies of a Declaration of Trust and a Deed, both of which relate to certain real property located in Platte County, Missouri. It is the position of the grantees in this deed that it is exempt from taxation by the state. I respectfully request the opinion of your department as to whether or not this land is exempt.

"For your further information, there are no religious structures on the premises and no religious activity is engaged in on the premises. At this time it is being operated solely as a farm, i.e. crops are in cultivation and stock is being raised, the farming activities being carried on by tenants."

In brief summary, the Declaration of Trust expresses a purpose of establishing a foundation to provide clergy and other workers of the Protestant Episcopal Church, and other church bodies, with practical experience in farming operations in order to train them in carrying on church work in rural and farming communities. To carry out this purpose, the donors, Wilbur A. Cochel and Carolyn F. Cochel, his wife, have conveyed to trustees a three hundred and twenty acre farm, on which the practical training is to be received. The donors have reserved the right to erect and pay for a house on said farm where they may live for the remainder of their lives, "to the end that said Wilbur A. Cochel may, under the authority and control of the trustees, supervise the operation of the farming activities upon said farm for his life * * *."

The instrument further provides that the trustees shall have full power to employ as manager for said farm a person experienced in farming operations and to allow him such compensation as they deem proper. The instrument expressly provides that all monies made from the operation of the farm shall belong to the trustees as a part of the trust estate, to be used solely for the purpose of the trust.

Section 6, Article X of the Missouri Constitution, 1945, contains the following provision:

"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 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."

Pursuant to this constitutional provision the Legislature enacted the following statute, (Laws 1945, page 1799, Section 5):

"The following subjects shall be exempt from taxation for state, county or local purposes: * * * Sixth, 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; 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."

The rule is well-established in this state that exemptions from taxation must be given a strict, although reasonable, construction. *Young Women's Christian Association vs. Baumann*, 344 Mo. 898, 130 S.W.(2d) 499; *State ex rel. St. Louis Young Men's*

Christian Association vs. Koen, 320 Mo. 1172, 11 S.W.(2d) 30.

Furthermore, the burden of establishing the right to exemption from taxation is upon the party claiming the exemption. National Cemetary Association of Missouri vs. Benson, 344 Mo. 784, 129 S. W. (2d) 842.

Although in some states, under particular constitutional or statutory provisions, ownership by a religious or educational organization is a sufficient basis for exemption of property from taxation (51 Am. Jur Taxation, Section 612, page 590), it is clear under the constitutional and statutory provisions in this state that use of the property is the deciding factor, once the non-profit nature of the enterprise has been established. The courts of this state have held that the exclusive use required has reference to a primary and inherent use as over against a mere secondary and incidental use. Salvation Army vs. Hoehn, 188 S.W.(2d) 286.

According to the information which you have supplied there are, at present no religious structures on the premises and no religious activities engaged in on the premises. The property is being operated solely as a farm with crops in cultivation and stock being raised, the farming activities being carried on by tenants.

In view of the fact that the property is now being so used we feel that it should not now be exempt from taxation because there is no showing that it is being used for any purpose set out in either the Constitution or statute as a basis for exemption. The fact that it might be so used at some time in the future is not sufficient to justify an exemption at present, the general rule being that a mere prospective use of property for religious or charitable purposes does not exempt it from taxation. Sioux Falls Lodge vs. Mundt, 37 S.D. 97, 156 N.W. 799; Annotation, 2 A.L.R. 545.

Whether or not, should the program contemplated by the Declaration of Trust be put into effect in the future, the property would be exempt from taxation cannot, we feel, be decided at the present time, as it will be a matter of fact to be determined when the actual method of operation is known. The actual use would then be the decisive question and the provisions of the declaration of trust would not be conclusive as to the nature of the enterprise any more than the purposes set out in a corporation's charter are conclusive as to its charitable nature. See Missouri Goodwill Industries vs. Gruner, 210 S. W. (2d) 38, 39.

CONCLUSION

Therefore, we are of the opinion that property conveyed to trustees for the purpose of establishing a foundation for training clergy in practical farming operations and which is now being used solely for the operation of farming is not presently entitled to be exempt from taxation under the provisions of Section 5, Article X of the Missouri Constitution of 1945 and Laws of Missouri 1945, page 1799, Section 5.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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