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STATE OF ILLINOIS
SPRINGFIELD

November 18, 1971

S-366

TAXATION:

Honorable John B. Roe
State's Attorney
Ogle County
Oregon, Illinois 61061

Dear Mr. Roe:

I have your recent letter wherein you state:

"I have been requested to obtain your opinion as to the tax status of property owned by the Catholic Church of Oregon, Illinois, under a proposed leasing agreement. The background facts are these:

The Catholic Church of Oregon, Illinois owns certain real estate on which is located a school and gymnasium. The church has closed these school facilities and proposes to lease the school buildings on this real estate to the local public school district for their use. The income that would be derived from this leasing agreement with the school district would be used solely for church purposes.

Under Chapter 120, Section 500.7, would the church in your opinion lose its tax exempt status on this real estate?"

You have referred to Section 19.7 of the Revenue Act of 1939, which reads as follows:

"All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States, and all property of old people's homes, when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit; * * * " Ill. Rev. Stats. 1969, ch. 120, par. 500.7.

Other pertinent statutory provisions which should be considered are Sections 19.1 and 19.2 of the Revenue Act of 1939, which read as follows:

"All lands donated by the United States for school purposes, not sold or leased; all property of schools, including the real estate on which the schools are located and any other real or personal property used by such schools exclusively for school purposes, not leased by such schools or otherwise used with a view to profit, including, but not limited to, student residence halls, dormitories and other housing facilities for students and their spouses and children, and staff housing facilities; and all lands, moneys, or other property heretofore or hereafter donated, granted, received or used for public school, college, theological seminary, university, or other educational purposes and the proceeds thereof, whether held in trust or absolutely. The property described in this Section shall be exempt from taxation

whether owned by a resident or non-resident of this State or by a corporation, whether incorporated in this or in any other state of the United States, and not leased or otherwise used with a view to profit. The Occupancy, in whole or in part, of a school-owned and operated dormitory or residence hall by students who belong to one or more fraternities, sororities, or other campus organizations shall not defeat the exemption for such property under the terms of this Section." Ill. Rev. Stats. 1969, ch. 120, par. 500.1.

"All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, including all such property owned by churches or religious institutions or denominations and used in conjunction therewith as parsonages or other housing facilities provided for ministers (including bishops, district superintendents and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic employees, performing the duties of their vocation as ministers at such churches or religious institutions or for such religious denominations." Ill. Rev. Stats. 1969, ch. 120, par. 500.2.

One claiming exemption from taxation has the burden of showing clearly that the property involved is within the exemption statute, People ex rel. Lloyd v. University of Illinois, 357 Ill. 369.

The courts have recognized the distinction between Section 19.7 relating to the property of charitable organizations and Sections 19.1 and 19.2 respectively relating to properties used for schools and religious purposes. In People v. St. Mary's Roman Catholic Hospital of Centralia, 306 Ill.

174, the Supreme Court held that a hospital owned by the Catholic Church was not exempt because it was not used for religious purposes. The court stated, however, that the property would have been exempt under Section 19.7 if it had been owned by a charitable organization. Your inquiry accordingly relates to Section 19.1 and 19.2 instead of Section 19.7.

Section 19.1 as noted above, refers to "property of schools * * * used by such schools exclusively for school purposes." Section 19.2 refers to "all property used exclusively for religious purposes, or used exclusively for school and religious purposes * * * including all such property owned by churches or religious institutions * * * "

Each section also provides that to be exempt the property is "not leased or otherwise used with a view to profit."

Your letter shows that the property will not be used by the owner exclusively for school purposes and that the property will be leased. The property accordingly does not come within the strict statutory language permitting exemption from taxation.

Exemption provisions must be strictly construed and taxation upheld if there is any doubt about the matter,

People ex rel. Goodman v. The U. of I. Foundation, 388 Ill. 363; People v. St. Mary's Hospital, 305 Ill. 174.

The court in the case of Turnverein "Lincoln" v. Board of Appeals of Cook County, 358 Ill. 135 had occasion to construe the foregoing provision. It held that property, to be tax exempt because of use for "charitable" purposes, must be owned by charitable organizations and be used exclusively for charitable purposes. The mere fact that property is owned by an institution of public charity is not sufficient to exempt it from taxation. The property itself must be devoted to charitable purposes and must be in actual use by the institution in carrying out directly its charitable purposes. (International College of Surgeons v. Brenza, 8 Ill. 2d 141.)

The Court in People v. Passavant Hospital, 342 Ill. 193, stated:

Property of an institution of public charity is not exempt from taxation where it is not in actual use directly for such purposes but is leased or otherwise used with a view to profit or income from the property even though such income or profit is applied exclusively to maintain such charitable institutions, if the primary use in such case is for profit and the application of the income is secondary."

The same rationale was applied in People v. Withers Home, 312 Ill. 136.

In The People v. U. of I. Foundation, 388 Ill. 353,

the Court stated:

"In determining whether the use to which certain property is put is for an exemption purpose, the intention of the owners of such property when putting it to use must first be ascertained."

In this case the lease arrangement was to compensate for the University of Illinois' inability to incur any indebtedness for the construction of certain buildings. No profit motive was involved. In your case, however, the lease is primarily for profit and only secondarily to be applied to religious purposes.

Your letter stated a lease arrangement was proposed but did not state whether payment would cover only maintenance or would include taxes as in People ex rel. Carr v. City of Chicago, 323 Ill. 68. Under the present statute, the existence of a lease bars exemption even though it does not result in a profit to the owner. In the Turnverein case cited above (358 Ill. 135) the Court at page 144 stated:

"Concerning the second ground urged, that the income from the stores was offset by the operating expenses, it need only be observed that if property, however owned, is let for a return, it is used for profit and so far as its liability to the burden of taxation is concerned, it is immaterial whether the owner actually makes a profit or sustains a loss. People v. Withers Home, 312 Ill. 136."

The present statute is of course based on the Constitution of 1870. Article IX, Section 3 provided for tax exemption of properties of the state, counties, and other municipal corporations "and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes * * * "

The Constitution of 1970 provides:

"The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes. The General Assembly by law may grant homestead exemptions or rent credits." Ill. Const., art. IX, sec. 6.

Whether this creates a new classification of "school districts" in addition to "property used exclusively for school purposes" is open to question and possible clarification by the General Assembly this fall.

Questions of exemptions require a consideration of all the facts in each particular case. (Turnverein "Lincoln" v. Board of Appeals of Cook County, 358 Ill. 135.) It is my opinion, however, that under the present statutes, as interpreted by the courts, the lease arrangement you mention would remove the tax-exemption for the property in question.

Very truly yours,

A T T O R N E Y G E N E R A L