Exemptions—Taxation—Clubhouses—Buildings—Soldiers —Sailors—Marines.

A clubhouse or building owned by a society or organization of honorably discharged soldiers, sailors or marines, and which is used exclusively for educational purposes, is exempt from taxation. Where, however, it is used exclusively for fraternal purposes it may not be exempted from taxation by the legislature. Where it is used exclusively for benevolent purposes it cannot be exempted from taxation unless the benevolences bestowed amount to public charity.

State Board of Equalization, October 5, 1931.
Helena, Montana.

Gentlemen:

You have requested an opinion concerning the constitutionality of the amendments to section 1998, R.C.M. 1921, as contained in chapter 98, laws of 1931, with respect to the provisions exempting from taxation a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in the army or navy of the United States when it is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, and also exempting all property in the possession of legal guardians of incompetent veterans of the World War, or minor dependents of such veterans where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation or gratuity.

With respect to the first of these provisions the constitution (section 2 of article XII) provides that the property of the United States, the state, counties, cities, towns, school districts, municipal corporations and public libraries is exempt from taxation and that certain other property mentioned therein may be exempted from taxation by act of the legislature. The property in question is not included within the class exempted by the constitution itself so that if it is to be exempted at all it must come within that class mentioned in that instrument which the

legislature is permitted to exempt. The property so permitted to be exempted is defined by the fundamental law to be:

> " * * * such other property as may be used exclusively for the agricultural and horticultural societies, for educational purposes, places for actual religious worship, hospitals and places of burial not used or held for private or corporate profit, institutions of purely public charity and evidences of debt secured by mortgages of record upon real or personal property in the state of Montana, * * *."

The legislature can extend the exemptions of property from taxation to property enumerated in the constitution but it cannot go further or include any other. (Cruse vs. Fischl, 55 Mont. 258, 175 Pac. 878.)

Prior to the enactment of said chapter 98 of the laws of 1931, amending section 1998 R.C.M. 1921, that section provided for the exemption of the property mentioned in the constitution and public art galleries and observatories not used or held for private or corporate profit when the art galleries or observatories were used for the purpose of education only. The legislature was careful to provide that as to the art galleries and observatories only those which were used for the purpose of education only were to be exempted. Plainly, art galleries and observatories not used for educational purposes exclusively could not under the constitution be exempted from taxation and the legislature apparently recognized this fact when it confined the exemption to those which were used exclusively for educational purposes. As another provision of the act provided for the exemption of all property used exclusively for educational purposes it is apparent that an art gallery or observatory would have been exempted under that provision, provided it was used exclusively for educational purposes and the mere designation by name of art galleries and observatories in the special provision of the act merely had the effect of a legislative declaration that the property of art galleries and observatories may from its nature be used for educational purposes within the meaning of the constitution and when it is so used exclusively and without private or corporate gain it should be embraced within that class of property mentioned in the constitution as being permitted to be exempted from taxation, namely, that property which is used exclusively for educational purposes.

All of the provisions of section 1998 relating to the exemption of property were retained in the amendment made by said chapter 98, and in addition thereto it was provided for the exemption of the property mentioned in your inquiry. By the amendment a clubhouse or building belonging to the society or organization mentioned therein is declared to be exempt from taxation if it is used exclusively for educational, fraternal, benevolent or purely public charitable purposes rather than for gain or profit. If such property is in fact used for educational purposes exclusively it was exempted from taxation by the law prior to the enactment of the amendment in question which provided for the exemption of property used exclusively for educational purposes regardless of ownership. It would also be exempted under the same provision found in the law after its amendment as that provision was carried into the amendatory

law without change. Therefore, the amendment providing that such property when owned by the society or organization therein mentioned and used exclusively for educational purposes is to be exempted added nothing to the law as it stood before the amendment. It did not create an additional exemption for like the art galleries and observatories above referred to such property was exempt by the provisions of the act which declare that property used exclusively for educational purposes shall be exempt from taxation.

It is therefore apparent that insofar as this amendment declares the property of the society or organization mentioned therein to be exempt when used exclusively for educational purposes does not contravene the constitution, that document permitting the legislature to exempt property used exclusively for such purposes from taxation.

However, the amendment further provides that the said property may be exempted if it is used exclusively for fraternal purposes. There is nothing in the constitution which declares that property so used may be exempted from taxation and as the constitutional provision is a limitation upon the authority of the legislature in respect to exempting property from taxation it seems quite clear that the amendment insofar as it attempts to permit the exemption of the property when used solely for fraternal purposes is in contravention of the constitution. If the legislature could exempt property used exclusively for fraternal purposes when it belongs to the society or organization mentioned in the amendment it could likewise exempt such property when it belonged to any other person, corporation or association, with the result that it would be within the power of the legislature to exempt all of the property of lodges, fraternities, sororities and other associations, corporations and individuals so long as it was used exclusively for fraternal purposes. No such power is to be found granted by the constitution and that document declaring what property may be exempted by the legislature from taxation is a limitation upon that body in that respect. Property used exclusively for fraternal purposes not being mentioned in the constitution as being the subject of exemption by act of the legislature it follows that the legislature is without power to enact that such property shall be exempted from taxation.

The amendment further provides that the said property shall be exempted from taxation when it is used exclusively for benevolent or purely public charitable purposes. There is not to be found in the constitution a provision which permits the exemption of property used exclusively for benevolent purposes. It is provided therein, however, that property used exclusively for purely public charity may be exempted by the legislature. Benevolences bestowed may or may not amount to public charity. They may partake of the most private character or of a public character, depending upon the character of the benevolences, the manner of their bestowal and their relationship to the public at large as distinguished from individuals or a relatively small number of individuals when compared to the number of persons in the community who have claims upon the charity of the public.

It is my opinion that the amendment is valid insofar as it exempts the property from taxation when it is used exclusively for public charita-

ble purposes but invalid insofar as it attempts to exempt the property if it is used exclusively for benevolent purposes which do not amount to public charitable purposes.

As to the second question mentioned by you, namely, that part of the amendment relating to the exemption of property in the hands of a guardian of incompetent veterans of the World War or minor dependents of such veterans, I enclose herewith copy of an opinion rendered to Homer A. Hoover, county attorney, Circle, Montana, under date of July 22, 1931, which gives you the views of this office upon that subject. The question of whether or not such property is in fact the property of the United States as declared by the amendment is a legal question which I do not believe has been decided by the courts. Though the question is not free from doubt I prefer to accept the legislative declaration that the property is entitled to be exempted from taxation as property belonging to the United States until such a time as the courts might otherwise declare.

Very truly yours,

L. A. FOOT,

Attorney General.