

Hospitals, Taxation Of. Educational Institutions, Taxation Of. County Commissioners, Per Diem Of.

Under Section 3671 of the Political Code, property used exclusively for educational purposes is exempt from taxation. Under the same Section Hospitals, when not used or held for private or corporate profits, are exempt from taxation. The payment of fees by patients which are merely used for paying the running expenses or for increasing the facilities of the institution and similar purposes, are not private or corporate profits within the meaning of the law.

Chairmen of the Board of County Commissioners need not sign warrants for officers salaries. Individual members of the board are entitled to per diem for work performed pursuant to authority delegated to them by the board.

Helena, Mont., April 18th, 1907.

Thomas Nelson Marlowe, Esq.,
County Attorney,
Missoula, Mont.

Dear Sir:—

Your letter of the 8th inst., requesting an opinion from this office upon the following questions, received:

1. "Should the Sisters' Academy for boys and girls, and St. Patrick's Hospital, located in the City of Missoula, be taxed? I am informed by the Assessor that a fee is charged all patients entering the hospital, and that a tuition fee is charged children attending the Academy."

2. "If the Chairman of the Board of County Commissioners puts in an extra day for signing warrants or other work, when the remainder of the Board of County Commissioners are not in session, is he entitled to the regular per diem allowed members of the board, for such day?"

3. "Is the purchasing agent of the Board of County Commissioners, when he puts in extra time purchasing provisions, fuel and things of that kind for the poor people of the county, and the supplies for the different institutions, allowed any extra compensation for the same?"

We shall answer the questions in the order set out above.

1. Section 2 of Article XII of the State Constitution, providing for the exemptions from taxation of certain property, reads as follows:

"The property of the United States, the State, counties, cities, towns, school districts, municipal corporations, and public libraries, shall be exempt from taxation, and such other property as may be used exclusively for 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, and institutions of purely public charity may be exempt from taxation."

Section 3671 of the Political Code provides for the exemption of the same classes of property and in almost the same language as the above provision of the Constitution.

Under the above constitutional provision and said Section 3671, you will notice that property used exclusively for educational purposes is exempt from taxation.

From the above statement of facts contained in your letter, we assume that the Sisters' Academy for boys and girls is used exclusively for educational purposes, and is, therefore, exempt from taxation.

As to hospitals, such laws provide that when they are not used or held for private or corporate profit, they are exempt from taxation.

Under similar constitutional provisions and laws, we find the general rule to be laid down as follows:

"An institution does not lose its charitable character and consequent exemption from taxation by reason of the fact that

those recipients of its benefits who are able to pay are required to do so, where no profit is made by the institution, and the amounts so received are applied in furthering its charitable purposes."

The fact that fees are charged patients entering the hospital makes no difference so long as the profits over and above the usual and necessary running expenses do not go to some private individual or corporation. If such fees are used merely for the purpose of paying the running expenses of the hospital and the salaries of the nurses and other attendants, and if the income from such fees in excess of the amount necessary to pay such running expenses is used for the purpose of enlarging the hospital or of building other hospitals, or used for other religious or charitable purposes, the courts hold that such excess is not held for private or corporate profit within the meaning of that term, as used in the Constitution and Laws of the State, and that, under such circumstances, the hospital property is exempt from taxation. For a construction of similar exemption laws, see the following authorities:

- Louisville vs. Nazareth Literary Institute, (Ky.) 36 S. W. 994.
- Kentucky Female Orphan School vs. Louisville, 100 Ky. 470.
- Appeal Tax Court vs. St. Peter's Academy, 50 Md. 321.
- Hennepin County vs. Brotherhood of Gethsemane Church; 27 Minn. 460.
- County of Hennepin vs. Grace, 27 Minn. 503.
- State vs. Powers, 10 Mo. Appeals, 283, affirmed in 74 Mo. 476.
- Sisters of Charity vs. Collector, 52 N. J. Law, 373.
- St. Joseph's Hospital vs. Ashland County, 96 Wis. 636.
- Philadelphia vs. Pennsylvania Hospital, 154 Pa. State, page 9.
- Episcopal Academy vs. Philadelphia, 150 Pa. State, 565.

2. As to your second question, it has already been held by this office in an opinion given to the County Attorney of Valley County (see Opinions of Attorney General, 1905-06, p. 323), that it is unnecessary for the County Commissioners to meet monthly for the purpose of auditing, allowing and authorizing the issuance of warrants for salaries of officers, and that such warrants need be signed only by the County Clerk, therefore it is not necessary for the Chairman of the Board of County Commissioners to put in an extra day each month for the signing of salary warrants, and, under the law, all other claims against the county can only be acted upon and warrants ordered drawn at regular quarterly meetings of the Board. No member of the Board, in the absence of express authority delegated to him by the Board at a regularly called meeting, has authority to bind the Board. Of course, if the Board when in regular meeting, or in special meeting duly called, by resolution spread upon the minutes, authorized the chairman or some other member to inspect work ordered by the Board, or perform on behalf of the Board some other duty, then, in our opinion, such member would be entitled to per diem for each day

he was actually engaged in the performance of such work under express authority of the Board, so long as such work is clearly within the scope of the authority of the County Commissioners as a Board. In other words, work performed by one member of the Board and for which he can charge per diem can only be in carrying out some matter of which the Board in regular session or duly called special session has acted upon as a Board and then delegated authority to a member of the Board to supervise or carry out such order.

With respect to your third question we are not able to answer same from the facts stated in your letter. We know of no county officer who is designated as "purchasing agent." In counties of the first, second and third classes we have County Auditors who generally perform such duties as might be required of a purchasing agent, but, as Missoula County is not a county belonging to any one of these classes, we would like further information from you as to who the purchasing agent is, how his office is created and his compensation fixed.

Yours very truly,

ALBERT J. GALEN,

Attorney General.