

**Taxation of Church and School Property. Exemption From  
Taxation of Church and School Property.**

Property actually used exclusively for schools, churches and charitable institutions is exempt from taxation, but a mere attempt to use property for such purposes will not exempt it.

Helena, Montana, Dec. 4, 1908.

Hon. Board of County Commissioners, Helena, Montana.

Gentlemen:

I am in receipt of your favor of the 27th inst., submitting for the consideration of this office the questions:

“Is the new catholic school and the new cathedral, now in

process of erection, in the City of Helena, and the old "Sands" residence, which is now rented to other parties, exempt from taxation for the year 1908?"

Section 2 of Article 12 of the State Constitution exempts certain property from taxation and confers authority upon the legislature to exempt certain other property from taxation. Under and by virtue of this authority the legislature by Sec. 2489 Revised Codes, has provided that the exemption laws shall apply to such property as is used exclusively "for educational purposes, places of actual religious worship \* \* \* and institutions of purely public charity."

Under this law churches and schools are exempt from taxation, but in order to be exempt such places must be actually used for some of the purposes named in the act, and not merely owned for the purpose of being eventually used for such purposes.

In discussing a similar question the Supreme Court of the State of Montana, in *Montana C. M. vs. County of Lewis and Clark*, 13 Mont., 559, said:

"Such intention is not sufficient to constitute the use contemplated by the constitution and the law."

This case also fully analyzed the section of the Constitution and the Section of the Statute above referred to, and under its authority we reach the conclusion that the land on which the new school and new cathedral are now being erected is subject to taxation for the present year, but that the buildings in process of erection thereon are not subject to taxation; and from the statement of facts submitted the Sands Residence is also subject to taxation for the present year.

A similar question was discussed at length by this office in letter addressed to the county attorney of Missoula County, and is reported in *Opinions of Attorney General for 1907 and 1908* at page 77.

Very respectfully yours,

ALBERT J. GALEN,  
Attorney General.