

Y. M. C. A. Building, Taxation of. Taxation, of Y. M. C. A. Building.

Portions of Y. M. C. A. Building actually used by the association in carrying on its work, including rooms rented to members for living quarters, are exempt from taxation. Portions of such building rented for foreign purposes, are subject to taxation.

November 29, 1915.

Hon. J. E. Erickson,
County Attorney,
Kalispell, Montana.

Dear Sir:

I am in receipt of your communication under date the 19th instant, relative to the taxation of the Y. M. C. A. buildings, and the Sisters' Hospital. It appears that the Y. M. C. A. building was erected some years ago at a cost of about sixty thousand dollars raised by popular subscription; that the association at Kalispell carries on the regular and ordinary work of a Y. M. C. A. including religious services every Sunday, Bible classes, etc. In addition to these strictly religious functions, classes are maintained in English for foreign men which are free, also free lectures upon health and hygiene, together with the usual facilities for athletic training under a physical director. A portion of the building is rented to tenants from which an income is derived; some of this arising from rooms, or lodgings rented to men and boys, and the remainder from offices rented to the U. S. Forestry Service. All of the proceeds from rentals, from whatever source, go to the support of the Y. M. C. A. work. This office has heretofore passed in a general way upon the question of what property is exempt from taxation under Section 2, Article XII of the State Constitution, in Volume 2, Opinions of Attorney General, page 78, and Volume 3, Opinions Attorney General, page 4. The Constitution of Montana exempts certain property from taxation:

"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 for burial not used or held for private or corporate profit, and institutions of purely public charity may be exempt from taxation."

Y. M. C. A. property actually used for the purposes of such association, is generally held to come within the terms religious, educational or charitable, as these words are used in exemption provisions, statutory or constitutional. This was so held by the Supreme Court of Kentucky in *Commonwealth v. Y. M. C. A.* 76 S. W., 522. Two cases which seemingly hold to the contrary are,

Cuburn v. Y. M. C. A. 29 Atlantic 992.
State v. Peterson, 39 Atlantic 655(N. J.).

The first of these cases was determined from the statute which excepted from any exemption real property not occupied by the exempted corporations for their own purposes; and the New Jersey case was decided upon the theory that such associations were not charitable institutions within the meaning of the New Jersey statute. See also the Supreme Court of Massachusetts, holding that:

"a young man's Christian association which was incorporated for the improvement of the spiritual, mental, social and physical condition of young men,"

and carrying on work essentially similar to that outlined by you, was a benevolent or charitable corporation within the meaning of their statute.

96 N. E. 1032, 210 Mass. 414.

To the same effect are

Mirian Osburn Memorial Home Association, 140 N. Y. A. 786,
Philadelphia v. Y. M. C. A. 125 Pa. 172; 17 Atlantic 475.

The question for decision in the present case, is whether the receipt of rentals from a portion of the building takes the Y. M. C. A. out of the exempted class? The courts are by no means agreed upon the effect of the receipt of rentals for a portion of their property by otherwise charitable or religious institutions, some of them even going so far as to say that the receipt of any rentals takes the entire property from which such are received, out of the exempted class.

State v. St. Louis Y. M. C. A. 68 S. W. 589,

Flitterer v. Crawford, 157 Mo. 51, 57 S. W. 532,

Y. M. C. A. v. N. Y. 113 N. Y. 187.

The exemption clause in these jurisdictions, however, generally reads:

"lands which, with the buildings thereon, are used exclusively for charitable purposes."

On the other hand we find that states whose exemption provisions used the word "property" as distinguished from "buildings," quite generally hold that where part is rented, and part occupied for purposes of the religious or charitable institution, that at least that part is exempted which is occupied by the charitable or religious institution.

Portland Hibernian Society v. Kelly, 42 Pac. 3.

The Supreme Court of Utah decided a case squarely, citing a large number of cases, to the effect that:

"Where, therefore, as in this case, a portion of certain property owned by a charitable institution is occupied and used by it for charitable purposes, and the other portion thereof is devoted to purposes of revenue, the portion used and occupied for charitable purposes is exempt, and the portion not so used and occupied is subject to taxation."

Parker v. Quinn, 64 Pac. 961.

This we think to be the better rule and supported by the great weight of authority.

A distinction must be made, however, between income received from letting of rooms to members for living quarters, and the leasing of space to strangers, and for other purposes than Y. M. C. A. work. The furnishing of decent living quarters under influences such as the

Y. M. C. A. attempts to throw about its members, partakes of the very essence of Y. M. C. A. activity, and such rentals are, therefore, generally considered upon a different basis than those arising from purposes having no relation to the organization. This was very well pointed out by the Supreme Court of Virginia, when it said:

"It is clear under the authorities, as it seems to us that the members of the association who occupy the rooms or dormitories in the third and fourth stories of the building are not tenants or lessers, but mere lodgers. The association, by its officers and servants, occupy a part of the building, and it retains the control over the whole of it. * * *

If the dominant purpose in the use made of these rooms is to obtain revenue or profit, although it is to be applied to the general objects of the association, it would render the property liable to taxation. But if the use made of these rooms has direct reference to the purposes for which the association was incorporated, and tends immediately and directly to promote those purposes, then its use is within the provisions exempting the property from taxation, although revenue or profit is derived therefrom as incident to such use."

Commonwealth v. Y. M. C. A. 80 S. E. 589 at 591.

It will be seen, therefore, that the portion of the income arising from the letting of rooms to members must be segregated and distinguished from that arising from other sources. The fact that such income may be made the basis of taxation, even though in a building otherwise exempt from taxation is pointed out in *State v. Quinn, supra*, and quotations therein contained.

I am, therefore, of the opinion that the portions of the Y. M. C. A. building actually used by the association in carrying on its work, including rooms rented to members for living quarters, is exempt from taxation, but that such portion as is rented for foreign purposes, is subject to taxation.

The question as to the taxation of the Sisters' Hospital has, I think been fully covered in the opinions heretofore referred to.

Yours very truly,

J. B. POINDEXTER,

Attorney General.