

Taxation—Exemption—Charitable Purposes.

Held under the facts stated in the opinion that the property in question is subject to taxation.

E. J. Cummins, Esq.,
County Attorney,
Deer Lodge, Montana.

My dear Mr. Cummins:

You have requested my opinion as to whether a tract of land conveyed and held under the following circumstances is exempt from taxation:

On November 27, 1903, R. D. Rychere conveyed to St. Mary's Academy, an educational association, a lot in the city of Deer Lodge, which adjoins St. Joseph's Hospital, a charitable institution. The lot is unoccupied and is about 600 feet wide and 900 feet long, and is not actually used or rented to any one. The deed was granted upon condition that, if the grantee or its successors are unable to construct an orphans' asylum on the property within twenty years from the date of the deed, then the said grantee and its successors or assigns are to hold said premises in trust for the benefit of the school known as "St. Mary's Academy" and St. Joseph's Hospital, a charitable institution.

I believe that your question is answered by the case of *Montana Catholic Missions v. Lewis and Clark County*, 13 Mont. 339, 35 Pac. 2. In this case the supreme court had before it a statement of facts very similar to those above set forth. The plaintiff in this case set up that it was an institution of purely public charity and was the owner of certain land in Lewis and Clark county. No contention was made that these lands were being used by the plaintiff in any manner. It was alleged in the complaint, however, that the lands were being held for the purpose of erecting buildings for certain charitable purposes. Upon these lands general taxes were assessed and levied by the County of Lewis and Clark for the year 1891. It was claimed that the lands were exempt from taxation under Section 2 of Article XII of the Constitution. The opinion by Mr. Justice DeWitt is, in part, as follows:

"Property of certain entities, as the state, cities, etc., is exempt; and property exclusively used for certain purposes is exempt. The property in question falls within the second class, as the plaintiff is not one of the institutions mentioned in the first class, as the state or a city, etc., but is an 'institution of purely public charity.' And, we find from the complaint, that the property is not used exclusively, or at all, by such 'institution of purely public charity.' The most that the complaint alleges is that the property is intended to be so

used. Such intention is not sufficient to constitute the use contemplated by the constitution and the law. (Green Bay Etc. Co. v. Outagamie County, 76 Wis. 587.)

"In Pennsylvania the court went further than we do, or need to, and held that the exemption would not apply to premises on which a church was in process of erection. (Mullen v. Commissioners, 85 Pa. St. 288; 27 Am. Rep. 650.) How much stronger against the appellant is the fact that in its case there is not even a commencement of the alleged intended use. (See also, Detroit Y. M. Soc. v. Mayor, 3 Mich. 172; Mulroy v. Churchman, 60 Iowa 717; Redemptionist Fathers v. Boston, 129 Mass. 178; Washburn College v. Commissioners, 8 Kan. 344.)

"We are therefore clearly of the opinion that, as the property in question is not at all used for an 'institution of purely public charity,' it is not exempt from taxation."

It is, therefore, my opinion that the land in this case is subject to taxation under the foregoing construction of our Constitution.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.