

No. 101

TAXATION—EXEMPTION FROM TAXATION—PROPERTY NOT BEING USED AS A PLACE FOR ACTUAL RELIGIOUS WORSHIP—RELIGION

Held: Property being used as a place for actual religious worship is exempt from taxation. Otherwise it is not.

April 25, 1941.

Board of County Commissioners
Silver Bow County
Butte, Montana

Gentlemen:

You have submitted for my opinion the question as to the legality of levying taxes upon lots 25, 26 and 27, Block 9, of Grand Avenue Addition to the City of Butte, Montana, which said lots appear upon the assessment rolls in the name of Heber F. Grant, as Trustee in Trust for the Church of Jesus Christ of Latter-Day Saints. The property in question has no buildings upon it and has never been used for any purpose.

Section 2, Article XII of the Constitution of Montana provides:

"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 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, may be exempt from taxation."

Section 1998 of the Revised Codes of Montana, 1935, insofar as pertinent here, reads as follows:

". . . such other property as is used exclusively . . . for places of actual religious worship . . . are exempt from taxation."

In *Montana Catholic Missions vs. The County of Lewis and Clark, et al.*, 13 Mont. 559, an action was brought by the plaintiff against the County of Lewis and Clark, and against the Treasurer thereof, praying for a judgment that the assessment of general taxes against certain real estate of plaintiff, and the levy of said taxes, be adjudged to be void, and that the said Treasurer be enjoined from selling said property for said taxes.

The plaintiff set up in its complaint that it was an institution of purely public charity and that it was the owner of certain lands in Lewis and Clark county describing them. It was not set up in the complaint this land was then being used by the plaintiff in any manner. It was alleged in the complaint the lands were held for the purpose of erecting buildings for certain purely charitable purposes, uncertain in character. Upon these lands the general taxes were assessed and levied by the County of Lewis and Clark.

The plaintiff claimed, before the Board of Equalization, it was exempt from this taxation, but the Board refused to allow said claim, except as to twenty-two acres of the tract, upon which was being built an asylum for orphans.

The case hereinbefore cited is directly in point with our question and is supported by the following authorities:

People vs. Catholic Bishop of Chicago, 142 N. E. 520, 311 Ill. 11;

Washburn College vs. Shawnee County, 8 Kan. 344;
Omaha Y. M. C. A. vs. Douglas County, 83 N. W. 924, 60
Neb. 642, 52 L. R. A. 122.

The deciding factor here is the question as to whether or not the property is being used as a **place for actual religious worship**. If so, the same is exempt from taxation. Otherwise, it is not.

While the building and maintaining of churches should be encouraged as much as possible, nevertheless, under the circumstances and the facts upon which this matter is determined, I am constrained to hold that the property is not being used as a place for actual religious worship. It is not exempt from taxation.

Sincerely yours,

JOHN W. BONNER
Attorney General