

August 21, 1945.

Mr. W. M. Black
 County Attorney
 Toole County
 Shelby, Montana

Dear Mr. Black:

You have requested my opinion as to whether, under the following set of facts, the property in question is exempt from taxation:

An organization located at Shelby is incorporated as a nonprofit organization. A copy of its articles of corporation is enclosed herewith.

It owns a certain lot in Shelby upon which is located a one story brick building and basement. The basement room of said building is used and occupied by this club and its members. A person may become a member upon purchasing a membership ticket for the sum of \$2.00 which is paid to the organization. Thereafter such person or persons may enter said basement room upon showing that they have a membership ticket and are entitled to participate in the entertainments furnished therein, purchase soft or hard drinks at his own expense and otherwise spend his time.

Said organization operates slot machines and other games of chance.

Said organization rents the whole first floor of said building known as the "Capital Cafe" wherein is operated and conducted said Capital Cafe and Restaurant.

Also on the rear of the same lot is located an apartment building which said organization rents to other persons and receives rent therefrom. It also receives rent from the restaurant and cafe.

Since it alleges it is incorporated as a nonprofit organization under state law it claims exemption from taxation on all its property irrespective of the income derived as rental as above stated.

I have read your opinion in which you arrive at the conclusion that such property, under the facts given, is not exempt from taxation. I must agree with this opinion.

Section 1998, Revised Codes of Montana, 1935, is the only statute in this state providing for exemptions from taxation. It is as follows:

Opinion No. 62.

Taxation—Exemption—Nonprofit Organization, Taxation of—Property, Taxation of.

Held: Only such property belonging to a society or organization of honorably discharged United States soldiers, sailors or marines, as is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, is exempt from taxation under the provisions of Section 1998, Revised Codes of Montana, 1935.

"The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, . . . and also when a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation . . ."

Our Supreme Court has repeatedly held that exemption is the exception, and one claiming his property is exempt from taxation has the burden of showing that his property belongs to a class which is specifically exempt. (See *Hale v. Jefferson County*, 39 Mont. 137, 101 Pac. 973; *Cruse v. Fischl*, 55 Mont. 258, 175 Pac. 878; *Buffalo Rapids Irrigation District v. Colleran*, 85 Mont. 466, 279 Pac. 369.)

It may be noted that in exempting a clubhouse or building belonging to any society or organization of honorably discharged United States soldiers, etc., Section 1998, Revised Codes of Montana, 1935, exempts such building only if it "is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit . . ." Under the facts here given, it cannot be said that the building here in question comes within this provision of the statute.

It is not the society or organization mentioned in the statute that is exempt, but the property owned by such organization or society. Such property is only exempt when it is used **exclusively** for the purposes mentioned in the statute.

Our Supreme Court in the early case of *Montana Catholic Missions v. Lewis and Clark County*, 13 Mont. 559, 35

Pac. 2, said at page 565 of the Montana Reports:

"We adhere to the view that the language intends to describe the property used, and not the concern using it, as being exempt. This view is in accord with the grammatical construction of the language, with the context of the section, and the general intent expressed therein."

It is therefore my opinion that only such property belonging to a society or organization of honorably discharged United States soldiers, sailors or marines, as is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, is exempt from taxation under the provisions of Section 1998, Revised Codes of Montana, 1935.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General