

Opinion No. 113

Montana Home For Aged—Charitable Institutions—Taxation—Exemption From Taxation.

Held: A charitable institution is not entitled to an exemption from taxation on property which it leases out or holds for revenue, such property not being necessary to nor used for the purposes of purely public charity, and this is true even though the proceeds from the rental be devoted to the charitable purpose. If the facts disclose that part of the property comes under the exemption, it is not taxable, and the assessor should segregate and divide the property so that only that portion which is not exempt will be taxed.

April 26, 1948

Mr. Melvin N. Hoiness
County Attorney
Yellowstone County
Billings, Montana

Dear Mr. Hoiness:

You have asked my opinion on the exemption of property belonging to the Montana Home for the Aged from taxation and the construction of Section 1998, Revised Codes of Montana, 1935. The facts are the Montana Home for the Aged has a housing unit on the rear of the lots on which the Home is located which they are not using as part of the institution but are renting to persons who do not qualify as either aged or infirm.

Section 1998 is based on Article XII, Section 2, of the Constitution of Montana. Article XII, Section 2, provides, in part:

"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 . . . institutions of purely public charity . . . may be exempt from taxation. . . ."

Section 1998, Revised Codes of Montana, 1935, provides, in part:

"The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, such other property as is used exclusively for . . . institutions of purely public charity . . . are exempt from taxation, but no more land than is necessary for such purpose is exempt; . . ."

In speaking of charitable institutions, Article XII, Section 2, Constitution of Montana, provides that property of charitable institutions may be exempt. Section 1998 is a statutory enactment of the constitutional provision. Thus, these sections must be considered together.

Charitable institutions, as such, are not exempt from taxation but rather "property used exclusively for institutions of purely public charity" is exempt. This is noted in 51 Am. Jur. Taxation, Section 606, as follows:

"Since the exemption statutes in general only exempt property used for the charitable purposes of an institution, property owned by a charitable institution which is not used for any such purpose is not exempt from taxation, as such property cannot be said to be devoted to charitable purposes, or necessary to carry out those purposes."

The specific question in this opinion is considered in annotation in 34 A.L.R. 634, 659, wherein the writer says:

"By the great weight of authority a charitable institution is not entitled to an exemption from taxation on property which it leases out or holds for revenue, although the funds derived in this manner are devoted to charitable purposes." (Citing cases from thirteen jurisdictions.)

Our Supreme Court had occasion to interpret this particular section of the Constitution and the statutory enactment of the same in the case of *Montana Catholic Missions, S.J. v. The County of Lewis and Clark*, 13 Mont. 559, wherein the Court said:

"It is observed that the section of the constitution cited describes two classes of property. We will notice the distinction as to these

two classes: 1. It names the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries. It is not left to the legislature to say whether or not the property of these institutions shall be exempt. The constitution, in itself, settles that it shall be. Nor is the test of exclusive use mentioned. The constitution says, simply, 'the property' of these institutions shall be exempt.

"Then the section of the constitution advances to another class of property, and describes it as 'property as may be used exclusively for' certain purposes, and defines the purposes, and among them names 'institutions of purely public charity.' This class of property is not exempt from taxation under the constitution, but may be made so by the legislature. The legislature has acted. . . So, with the constitution and the law together, we have this condition: 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.' 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."

The Catholic Missions case requires that the land must be actually used by the institution as a part of its purely public charity in order to be exempt. This seems to be in line with the rules set down and the cases cited in American Jurisprudence and in the A.L.R. annotation.

Therefore, it is my opinion a charitable institution is not entitled to an exemption from taxation on property which it leases out or holds for revenue, such property not being necessary to nor used for the purposes of purely public charity, and this is true even though the proceeds from the rental be devoted to the charitable purpose.

If the facts disclose that part of the property comes under the exemption, it is not taxable, and the assessor should segregate and divide the property so that only that portion which is not exempt will be taxed.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General