

July 3, 1951.

Mr. Lloyd A. Murrills  
County Attorney  
Glacier County  
Cut Bank, Montana

Dear Mr. Murrills:

You have given me a situation which I set out as follows:

"A, an individual, owns several city lots and a house located on them. A has given B, an individual, a contract for deed to the premises. B in turn has leased this land and house to C, an organization that holds property for a church. C pays a regular rental to B for the use of this property. B has also given C an option to purchase, but C has not exercised this option. The pastor of the church resides in the house, which is also used as a place of religious worship."

Based on these facts you requested my opinion on whether or not the property is exempt from taxation.

Article XII, Section 2 of the Montana Constitution and Section 84-202, Revised Codes of Montana, 1947, provide for the exemption from taxation of certain property. Article XII, Section 2, reads as follows:

"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 84-202 reads in part:

"Exemptions from Taxation. 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 agricultural and horticultural societies, for educational purposes, places of actual religious worship, hospitals and places of burial not used or held for

#### Opinion No. 27

#### Taxation—Exemptions, When Property Not Used Exclusively for Religious Worship

**Held:** Property leased to a church or church organization for regular monthly rental, although used by the lessee as a place for actual worship, is not exempt from taxation since it cannot be said the property is used "exclusively" for a place of religious worship. Such use of the premises for profit by the lessor prevents the property from being exempt.

private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the State of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt; . . ."

The Supreme Court of Montana in *Montana Catholic Mission v. The County of Lewis and Clark*, 13 Mont. 559, 35 Pac. 2, declared that the above section of the constitution described two classes of property; that is (1) property of certain entities as the state, cities, etc., and (2) property exclusively used for certain purposes. The property involved in your question, if it is to be exempt, must come within class II. It is clear the property is not in the first class.

You will note that in the second class, where the exclusive use of the property is a test, that nothing is said about ownership. No case in Montana has definitely said that the ownership and the use must be in the same person, group or corporation to allow the exemption. When this question of division of ownership and use has arisen in other jurisdictions the cases have not been in accord:

"In many instances exemption from taxation is granted by constitutional or statutory provisions to property 'used' for tax-exempt purposes, without any reference to ownership.

The cases arising under this type of statute are not in accord. In a number of jurisdictions such statute has been construed verbatim, and the exemption has been sustained whenever the property was used and occupied by a lessee for tax-exempt purposes. In other jurisdictions, however, it has been held that property leased by tax exempt bodies and used by them for their exempted purposes is only tax exempt if the lessee does not pay rent to the lessor, but that it loses its tax exemption if rented by the lessor for profit.

The reason for this distinction is that under the revenue laws, taxes are generally charged against the owners and not against the lessees of real estate, so that a tax exemption

would result in a completely unjustified benefits to the owner in those cases where he receives his regular rent." 157 A. L. R. 867.

Even in those jurisdictions taking the view that payment of rent is a relevant factor, it is indicated that the amount of rent may be considered.

In answering the question you have asked me, I do not believe it is necessary to determine whether or not the property must be owned and used by the same person, organization or corporation in order for the property to be exempt from taxation under class II. Therefore, I express no opinion on that subject. It is my opinion that your question can be answered by solely applying the "exclusive use" test.

In some of the jurisdictions that consider the payment of rent a relevant factor, it has been decided that the use of the property by the lessor as a source of revenue is a use of the property in addition to its use as a place of religious worship. Hence, the property is not exempt from taxation because it is not used exclusively as a place of actual religious worship.

In this connection the court said in *Commonwealth v. First Christian Church of Louisville*, 169 Ky. 410, 183 S. W. 943, 946, Ann. Cas. 1918 B 525, 157 A. L. R. 870.

"So it seems that if appellee . . . employed or used the property purchased by him for gain, by entering into such an arrangement with the Trustees of the First Christian Church that he was remunerated by the church for its use of the property for religious worship, the use he made of the property was one by which he received compensation for its use, and the use to which he put it was not for religious worship. When one lets his property for rent, the use which he is making of it as the owner cannot be said to be a use for religious worship."

Also, in the case of *South Dakota Sigma Chapter House Association v. Clay County*, 276 N. W. 258, it was said at page 262:

". . . the landlord may not claim exemption of property leased to an institution of one of the enumerated classes for a rent equivalent. As to

such an ownership, the property is used exclusively for rental purposes and not for charitable or benevolent or educational, etc., purposes. (Citing cases)"

It is my opinion that this construction is the preferable one. It is more in line with the principle upon which this exemption from taxation is based. In the South Dakota case this principle is aptly stated as follows:

"An exemption of this type is granted as a concession by government in return for unselfish ministrations to human welfare."

Besides, this position is in keeping with the general law regarding exemptions from taxation as expressed in *Cruse v. Fischl*, 55 Mont. 259, 267; 175 Pac. 878:

"The taxing power of the state is never presumed to be relinquished unless the intention to relinquish is expressed in clear and unambiguous terms."

"Every claim for exemption from taxation should be denied unless, the exemption is granted so clearly as to leave no room for any fair doubt."

Therefore, it is my opinion that property leased to a church or church organization for regular monthly rental, although used by the lessee as a place for actual worship, is not exempt from taxation since it cannot be said the property is used "exclusively" for a place of religious worship. Such use of the premises for profit by the lessor prevents the property from being exempt.

Hence, in my opinion, the property referred to in your question is not exempt from taxation.

Very truly yours,  
ARNOLD H. OLSEN  
Attorney General