

**Opinion No. 60.****Taxation—Exemptions—Educational  
Institutions—Residences of  
Teachers.**

HELD: Buildings owned by an educational institution and used exclusively as residences for the principal and teachers of the school are exempt from property taxation as property used exclusively for educational purposes under the provisions of Article XII, Section 2 of the Montana Constitution, and Section 84-202, R. C. M., 1947.

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February 4, 1954.

Mr. Michael J. O'Connell  
County Attorney  
Gallatin County  
Bozeman, Montana

Dear Mr. O'Connell:

You have asked my opinion upon the following question:

“Are buildings used as residences for the principal and teachers of a school owned and operated by a religious society exempt from property taxation under the provisions of Article XII, Section 2 of the Constitution of Montana, and Section 84-202, R. C. M., 1947?”

You have supplied me with these additional facts: the school is primarily for members of the religious society; it is in a rural area several miles from the nearest city; and it has boarding pupils as well as day pupils.

The constitutional provision permitting exemption of property from taxation is Article XII, Section 2 of the Montana Constitution, and it provides as follows:

"Sec. 2. 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."

The statute enacted pursuant to this constitutional provision is Section 84-202, R. C. M., 1947, which provides 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 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; . . ."

Since nothing in the statement of facts indicates that the residences in question are primarily used for religious worship, it appears that the exemption is not claimed for a "place of actual religious worship," but rather is based upon the use of the property "exclusively . . . for educational purposes."

The first, and leading case upon the question of exemptions in this state, *Montana Catholic Missions v. County of Lewis and Clark*, 13 Mont. 559, 35 Pac. 2, laid down the rule which has been followed consistently. That rule, briefly stated is that the exemption applies to the property itself and not to the institution owning the property.

Under this rule, the fundamental consideration is the use to which the property is being put at the time that the exemption is claimed. If it is being used to earn a profit, the property is not exempt.

This rule has been followed in numerous opinions issued by this office. In 6 Opinions of the Attorney General, 282, it was held that portions of a Y. M. C. A. building actually used by the association in carrying on its work, including rooms rented to members for living quarters are exempt from taxation because used exclusively for educational and charitable work. In 22 Opinions of the Attorney General 184, No. 113, it was stated that a charitable institution is not entitled to an exemption from taxation on property which it leases or holds for revenue. In 23 Opinions of the Attorney General 93, No. 36, this office held that the determining factor in deciding whether property used by a hospital association is entitled to exemption is whether or not the dominant and substantial use of the property is for benevolent and non-profit purposes, rather than to make a profit for the individuals who comprise the association. It is the primary duty of local taxing authorities to investigate claims for exemption and determine whether, as a matter of fact, the dominant and substantial use of the property is for an exempt purpose. This investigation will determine whether the above stated rules of law apply in the particular situation.

There has been no Montana case or previous opinion of this office on the subject of residences for teachers at educational institutions. However, there have been recent decisions in states having substantially the same requirements for exemptions as our own.

In the case of *Application of Thomas G. Clarkson Memorial College*, 77 N. Y. S. (2d) 182, it was held that the residences of teachers are exempt from property taxation. The court said:

"In all fairness, we may take notice of the fact that colleges will find it difficult to obtain teachers unless they can provide or find living quarters for them. It is sheer nonsense to assume that the educational process is not progressing in the residences

of the teaching staff. Preparations have to be made for recitations, lectures and examinations and duties consequent thereto, to say nothing of meetings with the students, either singly or in groups. Students engage in educational activities in their rooms; teachers do the same in their homes."

The result in this case is essentially identical with the conclusion reached by Attorney General Poindexter in 6 Opinions of the Attorney General 282, *supra*, in which he held that the portion of a Y. M. C. A. used as rooms for members was used exclusively for education and charitable purposes and was therefore exempt.

It is, therefore, my opinion that buildings owned by an educational institution and used exclusively as residences for the principal and teachers of the school are exempt from property taxation as property used exclusively for educational purposes under the provisions of Article XII, Section 2 of the Montana Constitution, and Section 84-202, R. C. M., 1947.